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THE PARLIAMENTARY GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA

BY

L. F. CRISP



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TO

L. W. AND R. E. C.

PREFACE

AN attempt has been made in the following chapters to draw a broad picture of the major elements of the national government of the Australian Commonwealth. Some of them, the two Houses for instance, are known in some detail to the written Constitution. Others, Cabinet and the Parties in particular, are not so known, but are none the less part and parcel of the working parliamentary constitution as the British people have developed it. All have necessarily been examined here in the historical perspective of their origins and evolution between 1891, when the first national constitutional convention met, and 1948, when these chapters were completed.

Australian politicians, parliamentary officials and pressmen and university researchers have been singularly unfruitful of memoirs, adequate biographies and monographs which illuminate the development of our politics and institutions. This lack is a major handicap to the writer of a general study of Australian political institutions and it can only be hoped that his difficulties may stimulate those who can throw light in the dark places of national political history to make their contributions. Democratic parliamentary institutions are as strong as the sympathetic understanding of their dynamics by the citizens they serve; but first the facts must be forthcoming as the basis of informed appreciation.

This contribution to that understanding is published to honour an undertaking given to Sir William Mitchell and the late Sir Herbert Angas Parsons in 1940 when, acting on behalf of the Council of the University of Adelaide, they awarded the author the John L. Young Research Scholarship. Needless to say, neither they, nor the University, nor my friend and teacher Professor G. V. Portus, who read the manuscript, are in any degree at all responsible for the judgments which may be found here.

I wish to acknowledge my very considerable indebtedness to my sister, who undertook the task of deciphering and typing these chapters, and to Mr. H. B. Muir who, in my absence from Australia, shouldered far more of the laborious process of seeing them through the press than should be the lot of any publisher.

L.F.C.

At the University of Adelaide,
August 25, 1948.

ERRATA

Page 1, line 4 of the Thomas Paine quotation, *for* 'variety' *read* 'vanity.'

Page 182, lines 1 and 2 should read: 'There have been some refusals of Lower House dissolutions; the only request for a double dissolution was granted (1914).'

Page 290, note 69, *for* 'V. G. Childs' *read* 'V. G. Childe.'

Page 299, note 47, *for* 'L. W. Eggleston' *read* 'F. W. Eggleston.'

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CHAPTER I

THE FATHERS AND THEIR CONSTITUTION

"In questions of power, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

Thomas Jefferson.

"We should seek to erect a constitutional edifice which shall be a guarantee of liberty and union for all time to come, to the whole people of this continent and the adjacent islands, to which they shall learn to look up with reverence and regard, which shall stand strong as a fortress and be held sacred as a shrine."

Alfred Deakin.

"There never did, there never will, and there never can exist a Parliament, or any description of men, or any generation of men, in any country, possessed of the right or the power of binding posterity to the end of time.... The variety and presumption of governing beyond the grave is the most ridiculous and insolent of all tyrannies."

Thomas Paine.

"Responsibility rests upon every member of this Committee at the present moment to do what lies in his power to avoid the evils which are so clear and so striking in the history of a similar Constitution—that of the United States. There we have written in letters of fire as a warning and a beacon for every man who will open his eyes and look at it, the undesirable and disastrous results of the adoption of a Constitution like this, of the adoption of a rigid Constitution, of putting the new wine of increasing and enlarging political enlightenment into the old bottles of a Constitution written by the dead hand."

William Holman.

I

THERE was no Damascus Road miracle about Australia's federal conversion. It took sixty years of spasmodic official effort and fluctuating public interest to bring the Commonwealth into being. The final federal movement of the 1890's had been preceded by almost every kind of individual and group advocacy of federal union which democratic colonial government afforded.[1] British Colonial Secretaries and governors, colonial political leaders and public petitioners, inter-colonial conferences and parliamentary select committees, local demagogues and factions—all, by 1890, had at one time or another peddled the cause of union.

They had pointed to the common British origins, language and social institutions By comparison with Canadians and Americans the homogeneity of Australians was extraordinary. The Australian pioneers, to whichever colony they came, brought with them the same living tradition of parliamentary self-government, often intensified by adherence to the six points of the Charter. The Australian colonies shared a common isolation from Britain and common dangers in the face of rival imperialisms. They had in common huge areas and sparse populations.

Over the years a great deal of parliamentary and after-dinner rhetoric on these themes was directed at uniting the Australian nation and establishing a Commonwealth Constitution. The people of the several colonies were frequently reminded that "the crimson thread of kinship runs through us all." They were constantly exhorted to let no "lion in the path" turn them from a determination that "for the first time in the world's history there will be a *nation for a continent and a continent for a* nation."

But rhetoric is seldom the stuff of history, and even Alfred Deakin's oratory was not of the order which makes hard-boiled intercolonial politicians fall weeping on each other's shoulders amid universal protestations of indissoluble federal brotherhood. A "simple intellectual and sentimental conviction"[2] about unity was likewise insufficient to diminish colonial exclusiveness and demolish intercolonial tariffs overnight. In fact, there was plenty of drab squabbling and hard bargaining in the long history of the federal movement. There was a great deal of official impatience and not a little public indifference. For the Constitution came the hard way, the democratic way, from discussion, compromise, party warfare, intercolonial bickering, and from campaigns up and down the country. No divine law-giver dropped the 128 Sections, rounded and polished, into the Imperial statute-book. Instead, the recognized leaders of the colonies sweated over their drafting and acceptance for a whole decade.[3] "It was first an official, then a political, and finally a social question. The movement originated in executive statecraft, was fostered by parliamentary discussion, and was brought to fruition by a triumphant social democracy."[4] The final understanding was made the more difficult by the remoteness of the colonies from each other.

> "The isolation of the States was greater then than now. With the exception of a few Premiers who had attended the Premiers' Conferences, very few of the representatives of the different States (at the 1891 Convention) had met. Members of one State were foreign to members of another."[5]

That gulf, greater still as between the six general electorates, underlay and reinforced all the sectional vested interests in colonial independence. It rendered possible the use of one or

other side of the issue to gain party advantages in local colonial politics. Not all the delegates at the opening banquet of the 1891 Convention were as complacent as Thomas Playford, who reassured them that—

> "The people will lose no power. The local Legislatures may lose a little. But the people will have larger powers than before."[6]

Colonial politicians and public servants too often and too narrowly evaluated federation in terms of its possible effect on their own careers and livelihoods. Conservative politicians—the men of property—wondered whether they would not lose under federation the ascendancy which their class had written so securely into existing colonial constitutions. Some merchants, manufacturers and workers had vested interests in individual colonial markets which they were reluctant to see jeopardised by the unifying of the Australian market under federation. These and other social groups in the colonies were apt to feel with J. H. Want—"Time enough to federate when danger threatens."[7]

And in fact there was no clear and present danger which imperatively drove the colonies together. Neither the excitement over German designs on New Guinea, French ambitions in the New Hebrides, nor the vaguer fear of the Russians were comparable with the dangers which drove the Swiss, the Americans or the Canadians into their federal unions. Yet at times the Colonial Governments were clearly alarmed: more so than the public was aware.[8] In 1890 John Cockburn said of the British General Edwards' recommendation of union in defence matters, "he came at an opportune time and grasped the skirts of happy chance."[9] Yet actual federation, in defence or any other sphere, was still ten years away. For Australians could, and did, take their time. They were able to do so because they were protected by the British navy These facts are not without their significance for the final shape of the Commonwealth Constitution.

The decisive political realities of the federal movement were not, then, international dangers or vague nationalistic oratory. What of economic factors?

As long ago as 1842 the Governments of New South Wales and Tasmania had done some hard bargaining about a customs union In 1849 the Privy Council's Committee on Trade and Plantations had foreseen the drab squabbles over intercolonial tariffs:

> "There is already ... a difference in the tariffs of South Australia and New South Wales, and although, until of late, this has been productive of little inconvenience, yet with the increase of settlers on either side of the imaginary line dividing them, it will become more and more serious. The division of New South Wales into two colonies (i.e. New South Wales and Victoria) would further aggravate this inconvenience, if the change should lead to the introduction of three entirely distinct tariffs, and to the consequent necessity for

imposing restrictions and securities on the import and export of goods between them. So great indeed would be the evil and such the obstruction of the intercolonial trade, and so great the check to the development of resources of each of these colonies, that it seems to us necessary that there should be one tariff common to them all, so that goods might be carried from the one into the other with the same absolute freedom as between any two adjacent counties of England."[10]

There is clearly foreshadowed the core of intercolonial politics for half a century, and even explicit mention of that spectre, "absolutely free" interstate trade, which was to stalk through the Conventions and to haunt successive occupants of the Government Front Bench in the Commonwealth Parliament. The early warning was not heeded and the six colonies quite deliberately developed independent economic and fiscal policies.

But as local markets expanded and gradually became in essence one national market, colonial boundaries became more and more grotesque in their artificiality. They had been arbitrarily drawn in Whitehall from time to time in the early nineteenth century to meet contemporary situations arising from new settlements. They bore no particular relations subsequently to economic divisions or administrative convenience. Though the colonial economies and administrative machines went some way to adapt themselves to these boundaries, any identification was progressively less possible. Administration follows the spreading economy and in the several colonies both were soon straining at the boundary lines. Even a seemingly natural line like the Murray between New South Wales and Victoria had been falsified by the great economic attraction Melbourne had for the Riverina.[11] Similarly, the Mount Gambier district was economically at least as Victorian as South Australian. Again, Sidney Kidman had his vast flocks and herds and stations spread across colonial boundaries in the Centre, yet every time his cattle crossed those lines he was supposed to pay duties—until 1901.

It must also be recalled that, while in most respects Australia was and is surprisingly homogeneous, there were two States which found themselves in peculiar positions in the 'Nineties.

Western Australians had only just won popular government (1890) when the rich goldfields of Kalgoorlie and Coolgardie were discovered (1891). The population of the colony leapt in consequence from 47,000 (1890) to 179,000 (1900). This influx consisted largely of miners and mining camp followers from the eastern colonies They brought with them the traditions of Chartism and Eureka and the teachings of Henry George and Karl Marx and Edward Bellamy, of our own William Lane and of Archibald of the "Bulletin." Those who came after 1893, in particular, brought federalist ideas of the popular sort, as

expounded by the Australian Natives Association and other federation leagues in New South Wales and Victoria.

The whole class equilibrium of Western Australia was upset; political stability was threatened; Western Australia's former isolation was brought out in bold relief. The ruling landowners and the provincial-minded "sand-gropers" found themselves on the defensive: not only did the newcomers think "dangerous thoughts," they spread them to some sections of the established colonists. The local "ruling classes" used their power in the Colonial Parliament for the most part to impede the federalist cause in the West. They complained that they were being dragged into federation against their wills by the Goldfields; yet when the Goldfields federalists raised the cry "Separation or Federation" and delivered an ultimatum to the Western Australian Government, the original Western Australians were the first to protest that there could be no separation, on the grounds that economically and geographically the goldfields were and must remain part of the West. Obviously they could not have it both ways. But they tried. The circumstances, however, were against them; by 1899 the "West Australian" newspaper saw the writing on the wall:

> "The Federalist mostly frankly admits that the strongest part of his argument rests on the consideration that if Federation offers no startling advantages at first, to refuse it would lead to such disaster for this colony that dictates of ordinary prudence require that Federation should be accepted."[12]

Their opposition to federation was exceeded only by their fear of being left out.

At all events, when the Colonial Government brought itself finally to a referendum on the Commonwealth Bill in 1900, only the conservative country electorates showed a majority against the union. And if the Goldfields are eliminated (despite the fact that some of the voters there were original Western Australians) there was still a majority—albeit a small one—for federation.

The case of Queensland was different. While other Australians, and indeed some Queenslanders too, were thinking and arguing about a basis for federation, a great number of people in that colony was fighting fiercely in Parliament and outside over coloured immigration policy. For many people, Kanakas and Chinese labourers were a more concrete and pressing problem than Federation. In general there was a division between the tropical north and the more temperate south of the colony. This struggle is reflected in Queensland's demand to be allowed to divide the State horizontally into three for purposes of Senate elections in the coming Commonwealth, instead of electing Senators from a State-wide constituency as in other

States. At the same time, many Queenslanders welcomed federation for the larger protected market which would be opened to Queensland sugar. This would not only mean profits, it would also enable the industry to be profitably run by European labour. The plea of necessity would then be taken from those who advocated coloured labour.

II

At the height of the passing excitement aroused by German interest in New Guinea in 1882 and by Queensland's abortive precautionary annexation of the non-Dutch half of that island, the colonies had agreed to form a Federal Council. By a British Act of Parliament (1885) they did in fact achieve such a very limited union. New Zealand and Fiji were foundation members along with the Australian colonies, each colony sending two delegates, except Fiji, which sent only one. The New South Wales Government, however, failed to join when it came to the point, Sir Henry Parkes holding that the Federal Council was a farce:

> "The Federation Government must be a government of power .... should be in design from the very first a complete legislative and executive government, suited to perform the grandest and highest functions of a nation."[13]

In 1890, John Cockburn outlined the powers and scope of the Federal Council in these terms:

> "The Federal Council Act gave to the colonies sovereign powers which were previously vested in the Imperial Government. The legislative powers of the Council included the relations of Australasia to the islands of the Pacific, prevention of influx of criminals, fisheries in Australian waters beyond territorial limits, the service of civil process of the Courts of any colony within Her Majesty's possessions in Australasia out of the jurisdiction of the colony in which it was issued, the enforcement of judgment of Courts of Law of any colony beyond the limits of the colony; and so on; and such of the following matters as might be referred to the Federal Council by the Legislatures of any two or more colonies—general defences, quarantine, patents of invention and discovery, copyright, bills of exchange, promissory notes, uniformity of weights and measures, recognition in other colonies of any marriage or divorce duly solemnized or decreed in any colony, naturalization of aliens, status of corporations or joint stock companies in other colonies than that in which they had been constituted and any other matter of general Australian interest with respect to which legislatures of the several colonies could legislate within their own limits, and as to which it was deemed desirable that there should be a law of general application, provided that in such cases the Acts of the Council should extend only to the colonies by whose Legislatures the matter should have been so referred to it, and such other colonies as might afterwards adopt the same."[14]

It will be seen that the Federal Council, given greater external pressure, would have borne to the ultimate Commonwealth Constitution a relation roughly analogous to that of the American Confederacy in relation to the subsequent Union under the 1787 American Constitution. In practice, the Federal Council union was loose and weak; unlike the American Confederacy, it never experienced even a short period of external danger. What few legislative powers the Council definitely possessed related almost entirely to legal facilities desired by the merchant class who shared power in those days with the "squattocracy." The Council had no executive powers; it had no power to raise revenue or expend money; its decisions were referred to the constituent colonial governments for action. Lacking, besides executive and financial powers, any continuity of personnel and any representation from the senior colony, the Council simply failed to capture the popular imagination. It aroused no enthusiasm and evoked few loyalties. Its individual delegates could conjure no prestige from the minds of the colonists, whom they represented only indirectly. The Council could not even establish any popular moral ascendancy over the Premiers' Conferences of those days. It was in no wise seriously to be regarded as a precursor of the Parliament of the Commonwealth.

In the beginning the Council was intended only as a stepping stone (perhaps one of many) towards full federal union. In the minds of its members "it felt itself to be nothing more than a kind of halfway house to federation."[15] But New South Wales never joined, and South Australia and New Zealand dropped out. In 1895 the Council made bold to recommend uniform company, banking and quarantine laws. But the Council met for the last time in 1899 and passed into oblivion unhonoured and unsung. Though its nominal powers clearly foreshadowed those of the coming Commonwealth, the Federal Council had been deliberately disregarded by the federal movement proper since 1890–91, when the New South Wales Government forcefully repeated its determination to have nothing whatever to do with it. It availed nothing that a few apologists maintained faith until the end, one still urging as late as 1897 that it would be well to utilize the Council as "a tabernacle wherein to lodge the federal spirit while the temple of completed federation is being built."[16]

III

In 1890 a Conference of colonial Premiers and Ministers in Melbourne discussed the suggestions for full federation which Sir Henry Parkes, Premier of New South Wales, had propounded in 1889. As a result, a Convention was held in Sydney in 1891 attended by delegations from the six Australian colonies and New Zealand. These were appointed by their respective parliaments. A draft Constitution was drawn up for the

approval of the seven parliaments and for enactment thereafter by the Imperial Parliament. The New South Wales Parliament failed to approve the draft and the whole issue was substantially dropped in Government circles for two or three years.

Then followed three years of intensive popular campaigning by the Australian Natives Association, various Federation Leagues and some leading Victorian and New South Wales politicians. There were popular unofficial conventions at Corowa (1893) and Bathurst (1896). This movement culminated in a further Convention, meeting successively in Adelaide, Sydney and Melbourne, in 1897–8. Queensland (at the instance of its Conservative Upper House) and New Zealand were unrepresented. All delegations except that of Western Australia were popularly elected, popular election being favoured by the Premiers' Conference at Hobart in 1895. A draft Constitution was drawn up and referred to the various electorates: a direct popular vote on the constitution had also been agreed to at Hobart in 1895. In the referendum New South Wales failed to secure its self-prescribed majority for the Constitution.

More negotiation followed, including a Premiers' Conference, and then the revised draft was submitted to the people, including the people of Queensland, in 1899. The Western Australian Government had not submitted the Constitution Bill to the people of that colony either in 1898 or 1899 In 1899 the other colonies all approved it and sent a delegation to Britain to secure its passage through the Imperial Parliament. Joseph Chamberlain, Colonial Secretary in Great Britain, sought some modifications, one or two of which were conceded. He then put pressure on Western Australia to unite with the others. The Bill passed the British Parliament and Western Australia held a referendum and decided for union. The Commonwealth came into being with all six colonies as members on 1st January, 1901. New Zealand went her own way.

Crucial work for federation was done at the Conventions of 1891 and 1897–8. The debates of 1897–8 were longer, and fiercer at times, than those of 1891. Perhaps this was due to the popular election of delegates to the Second Convention, perhaps simply to a six year maturing of conflicting principles and prejudices. The elected delegates had deeply committed themselves in public, whereas the men of 1891 had been appointed by their respective parliaments to reach an agreement, without being committed to any specific line of policy. Moreover, the vigorous popular campaigning at the instance of the Australian Natives Association and other bodies had a marked effect on the trend of development after 1894. It is not seriously disputed to-day by any section of opinion that the final draft was in many ways superior to the draft of 1891. At the same time it was very much more democratic.

The personnel of the delegations changed considerably between 1891 and 1897. Sir Charles Dilke has pointed out that of the 45 members of the first Convention in 1891 only 16 were born in Australia.[17] Six Premiers and 9 ex-Premiers were present. Delegates had an average of 15 years' parliamentary experience behind them. They met under the benign (but mutually hostile) patronage of the two Olympian deities, Sir Henry Parkes and Sir George Grey. Queensland and New Zealand delegates were present. In 1897 Queensland and New Zealand were unrepresented. The two "grand old men" of 1891 were gone. Delegates at the later Convention had an average of 12 years' parliamentary life behind them. The occupational backgrounds of the delegates are broadly reflected in the following table[18]:

	1891 Convention.	1897–8 Convention.
Lawyers	19	25
Journalists	2	8
Other Professional	3	3
Politicians	5	3
Pastoralists	15	14
Other land interests	2	0
Commerce, industry and finance	11	12
Military	0	0
Trade Union officials	0	1
Small shopkeepers, employees, etc.	0	0

Notable in this analysis are the high percentage of lawyers, the high proportion of pastoralists and merchants (as distinct from farmers and manufacturers more prominent in Australian politics later), the fourfold increase of journalists in the second Convention, and the almost complete absence of the trade-unionists, wage-earners and small shopkeepers who were even then appearing in colonial politics and who were to take the centre of the political stage within a decade. This last contrast is very significant; there was an outstanding difference between the type of men who made the Constitution and those who so soon had to operate it.

It is possible to over-estimate the popular interest in Federation, even in 1897, at the height of the final phase. The percentage polls of enrolled voters in the several colonies were very low (compulsory voting was still 25 years away):

Convention delegation elections (1897)	25–51%
First Commonwealth Bill Referendum (1898)	49–50%
Second Commonwealth Bill Referendum (1899)	36–67%
Colonial General Elections (1885–1900 average)	50–70%[19]

In all, 59% of electors voted on the second Commonwealth Bill Referendum and in fact 42% of eligible electors voted "yes" for an "indissoluble federal Commonwealth." As will be

suggested below, the rank and file (and some of the leadership) of Labour were more interested in "the social problem" than in the federation movement. In other classes there were often other preoccupations. In all there was a measure of plain indifference, whether based in lack of interest or in a feeling of inevitability regarding federal union. The delegates to the second Convention were very conscious of that state of affairs, federalists of one sort or another though they themselves were. Even the men of property realized that they could not have it both ways: it was impossible to keep social services and experiments all within arm's reach of their Colonial Legislative Councils and at the same time make the Commonwealth scheme sufficiently attractive to win at least the formal support of many lower middle- and working-class voters. The majority of the Fathers had little love for invalid and old age pensions or the extension of arbitration and conciliation fields, but for their own purposes they wanted to "sell" federation.[20]

At the Conference of 1890 and the Conventions of 1891 and 1897–8, and in the popular phases of the federal movement in the years 1894–1899, the clash of opinions and interests came out on several levels. There was the clash of the "small" colonies with the "big" colonies. There was the clash on the commercial and fiscal levels—notably the struggle over tariffs between free-traders and protectionists On the social theory level there was a three-corned clash between Conservatives, Liberals and Radicals. On the imperial plane the struggle was between imperialists and nationalists. In the field of the socially controlled services and utilities—railways, irrigation and the like—the clash was between centralizers and the champions of regional (Colonial) control. On the constitutional level (in the narrower sense) there was a double division, between the respective supporters of federation and of unification, and again between the exponents of "responsible" government and those of American or Swiss patterns.

> "During the course of the sessions of the Conventions there were cross-currents and divisions of every kind. Sometimes the divisions would be between free-traders and protectionists; sometimes between conservatives and liberals; sometimes large States against small States. Any two members might find themselves one day in agreement, and the next day in opposition. They thus got to know and appreciate one another's point of view, and a federal spirit developed continuously."[21]

It is therefore clearly inaccurate to distinguish some wholly "good" and other wholly "bad" constitution-makers and to say their work "was a desperate contest resulting in a compromise among the old colonial politicians who could not see the advantages of depriving the colonies of their powers, and a great many Australian patriots who were animated by the desire to get as

much Australian national life as was practically possible."[22] Such a falsely clear-cut picture is wholly unreal and hopelessly over-simplified.

The Conservatives and the Cause of Property.

Although liberal franchise laws were operative for the Lower Houses of the Legislatures in almost every colony for many years before 1890, it was only in the final decade of the nineteenth century—and the final decade of the federation movement—that Labour appeared in politics. It was not a remarkable thing, then, that in the federal campaigns of the 'Nineties, and especially at the Conventions, Labour played a negligible direct role. In fact, the men of property predominated in the achievement and shaping of the Commonwealth.

The Fathers of the Constitution were representative of the "big men" of their day and of the Australian economy as it then was. The pastoralists and merchants were individualists. So were the other considerable element in the Conventions, the lawyers. The men of property controlled the colonial parliaments; they were especially well entrenched in the Upper Houses. Their leaders were well-known figures in the electorates; the emergent Labour leaders were not. The broad political philosophy of the men of property was at that time the creed of the vast majority of the electorate; as the history of North America has also shown, pioneers and frontiersmen are overwhelmingly individualists. Collectivist ideas define themselves and win support only with the coming of a more settled economy and a more stable class structure, with the limitation of opportunity and the concentration of ownership.

Amongst the more enterprising sections of manufacturers and merchants there was a growing feeling through the 'Seventies and 'Eighties that there was commercial advantage to be gained from sweeping away colonial borders. This view was strongest, though far from unanimous, in the more economically advanced colonies, Victoria and New South Wales. But it was not confined to these. Some of the "small States" men hankered after the additional profits to be derived from an undivided national economy. Thus at the 1891 Convention, J. H. Gordon, a member of the South Australian Legislative Council, was urging federal control of railway rates, in the hope that Adelaide and Port Pirie interests could exploit the wealth recently beginning to be derived from Broken Hill in New South Wales. In a word, a continent-wide economy meant bigger and better profits for the bold entrepreneur.

Fear was also a strong force for union amongst these same classes. In the 1780's, as the American Revolution proceeded, the propertied classes and their spokesmen became alarmed at

costly social experiments would be made. Even if there were an attempt in their State, the Legislative Council, elected on a property franchise, would protect their interests.

The 'Nineties mark the zenith of the triumph of competitive capitalist principles. In matters that concerned his private enterprises the capitalist required power to be vested locally so that he might stamp on any prospective governmental intervention. And in so far as he could determine the economic powers of the coming Commonwealth, the doctrine of "holding the ring" only was to underlie them.

Not unnaturally these Conservatives set great store by the new Commonwealth Upper House (the Senate) as a potential bastion against "extreme socialism." They sought to make it in the image of their highly effective colonial Legislative Councils. It was true that times had changed and the general feeling of the popular electorate was against the property franchise for the Senate. But there are more ways than one of appropriating a federal Upper House. One of these was to have it indirectly elected by the State parliaments, in any joint sitting of whose Houses propertied interests would almost certainly carry the day in view of their guaranteed preponderance in the Councils. A Senate carefully handpicked in that manner and provided with something like equal powers with the House of Representatives would be able to resist progressive and (in terms of their taxation) expensive measures. Given sufficient powers, they felt, the Senate might do even better than the Legislative Councils—a strong Senate "with powers practically equal to those of the other House, and immovable under ordinary circumstances for six years, will be deemed by all Conservatives as a very welcome alternative to the present system (or want of system) under which a nominee House is alternately cajoled and bullied by the Premier of the day, as the circumstances may seem to dictate."[29]

One further strong line of the Conservatives might be mentioned: they feared and fought the referendum as an institution—even for purposes of adopting the Constitution which was to bind generations of Australians to come. Sir Henry Parkes, Premier of New South Wales in 1891, deprecated any such reference of issues to the people: "The uninformed and reckless are always ready to denounce any work which they cannot comprehend." Sir Samuel Griffith, Premier of Queensland in 1891, held that the people were unfitted to pass upon the draft Constitution, or subsequently upon proposed amendments (he also opposed popular election of Senators as late as 1897).[30] The banker member of the second Convention, J. T. Walker, remarked that, "with regard to the referendum, it appears to me that it is very much like referring from the more intelligent to the less intelligent." In subsequent practice, the popular

referendum has so effectively prevented the adoption of progressive amendments that the 1891 provision for a majority in each House and in conventions in the States could have proved no more conservative in its effects.

However ready the keener partisans of property to bolster minority rights against majority rule, the contribution to successful federation of the moderate Conservatives like Barton, tough-minded men of affairs, cannot easily be exaggerated. They were capable of effective concentration on the broad substance of the objective without meticulous insistence on the realization of all their detailed hopes. In this respect the moderate and intelligent Conservative has repeatedly proved one of the most valuable members of a constituent assembly, giving it solid practical strength where the more liberal or radical member is apt to neglect the substance for the frill. The men who, like Barton and Deakin, really provided the driving force of the Federal movement, were inspired by something wider than, yet something they could feel at least as personally compelling as, the personal economic interests which motivate so much else in political life.

The Liberals and Progressive Policies.

In the days of the Federation Movement, it was still possible to find many notable liberals in Liberal parties[31]—such men as Higinbotham, Kingston, Isaacs, Higgins, Piddington, Deakin and Cockburn[32]. In the Conventions it was the Liberals who spoke for Australian democracy. They spoke also for Australian nationalism in a period of healthy nationalism in art and letters and in social life as well as in politics. On issues of the allocation of powers they usually stood on the slogan "Trust the Federal Government." In the absence of Labour,[33] it was these Liberals who spoke for working people and secured several major modifications in the Constitution Bill as the Conservatives had desired to have it.

The Liberals of the 'Nineties were the first generation brought up in the atmosphere of Darwinism with its stress on evolution.[34] It was not surprising that they brought to Constitution-making an attitude different from that of the Fathers of the American Constitution.

> "It seems to me [wrote Higgins after the Convention] that what we had to do was a much more difficult and responsible task than pedantic imitation of the earliest modern federation, that of the United States. The world has learnt much since 1789; the United States itself has learnt the danger of a rigid, unalterable Constitution."[35]

Higgins himself was on the Left of Liberalism. While many of his lawyer colleagues were content to debate the legalisms of the federal system, Higgins sought to direct the electorate and

the Conventions to the human aspects of government. Higgins looked beyond the wrangles over Commonwealth-State relations towards the achievement of what to-day is known as the "social service state." He was scornful of arguments for a strong Senate, for limited suffrage and plural voting:

> "There is no need for property to be represented in Parliament, for property owners are well able to protect their own interests. It is the poor man who needs protection, and the great object of all Liberal measures is to help him. Companies indeed do give shareholders votes according to their interests, but the lives and liberties of men are not on the same level as the profits of trading companies."[36]

The democrat in Higgins fought equal Senate representation as the surrender of the greatest of democratic principles, majority rule. When the Bill was before the people in the referenda Higgins still opposed the whole idea of a States' Senate: he said that it would in any case prove to be just a second party House and that consequently equal State representation was an imposition upon the people.

Higgins was supported in some of these beliefs by men as convinced as himself. Cockburn warned the 1891 Convention:

> "When a Constitution becomes, not theoretically, but practically immutable, it is apt also to become the object of a somewhat superstitious reverence on the part of the people, which leads them to regard the Constitution as something sacred in itself. From what Mr. Deakin said,[37] I gathered that he regarded this as an advantage. He spoke of a government 'strong as a fortress and sacred as a shrine. I am not able altogether to agree with the honourable member there. I think that governments partake the nature of utilitarian devices. As has been well said by an authority on constitutional law, constitutions are devices founded on expediency and possess no intrinsic right of existence. So that, whatever the form of government may be—whether it is that of separate States, or the intermediate stage of federation, or whether it is on the highest level of all, that of unification—still I think we shall best serve the real object of government if we regard all these, not as ends in themselves, and therefore not as entitled to idolatrous reverence, but as strictly utilitarian institutions devised as a means towards the one object in view—that of good government; otherwise we may find that a rigid constitution will become one of the strongest engines of conservatism .... One of our most difficult problems will be to reconcile that elasticity which is so necessary to the development of a constitution, with that rigidity which is recognized as being one of the characteristics of federation."[38]

The same approach was made by A. B. Piddington:

> "There is nothing mysterious or cryptic about federation. It is simply a commonsense and practical arrangement for the partition of different powers of government."[39]

He decried the departure from more strictly British or colonial models:

> "How vain is it for the pedants of federation to try any longer to induce the people of this or any colony to construct their form of government, not according as it suits them and as they desire, but according to some artificial model reposing in a glass case upon the shelves of the federalists' library.... In framing it, its constructors have lost sight of the essential principle that no constitution can promise a successful working unless it is the result of organic growth from the principles, the practice, and the understandings, and even the prejudices as well as the privileges and rights of the people for whom it is framed. This Constitution has no such origin. It is a pure and absolute importation from the American Constitution of 1789."[40]

Piddington went on to contrast with the Australian draft constitution the Canadian Constitution, which in its preamble proclaims: "That the people of Canada desire to be federally united with a constitution *similar in principle to that of the United Kingdom.*" It is to be noticed however, that the Australian Constitution-makers were sufficiently English not to tack a Bill of Rights onto the Constitution: they relied on a democratic Parliament and a free electorate to secure and safeguard fundamental rights.[41] Perhaps, too, this first generation brought up in an atmosphere of Darwinian evolutionary ideas found any "final" statement of rights an unreal thing. Nor would the use made by American men of property of the legal rights originally intended to safeguard individual human persons encourage Australian Liberals to lay themselves open in the same way to the interpretations of conservative lawyers and judges.

At the same time the Liberals fought against any infringement of popular rights. Charles Cameron Kingston voiced their successful opposition to an indirectly elected Senate on broad democratic grounds:

> "To my mind South Australia would hardly be justified in entering a Federation in which, as provided in the [1891] Commonwealth Bill, the choice of Senators is controlled by, or shared with, Legislative Councils such as are found elsewhere. The result as regards all subjects relegated to the Federal authority could not fail to be wholesale sacrifice of present popular constitutional advantage."[42]

Piddington, like Higgins, opposed the whole principle of a States' Senate:

> "For the first time a people of English institutions are asked to assent to the constitution of a House which in its very basis and upon the very theory of its existence and functions violates the principles that a member of parliament.... when he takes his seat sits clothed with the duty and endowed with the responsibility and the powers that attach to a man who must be the adviser of the *nation at large.*"[43]

As early as 1890, Cockburn was advocating the widest popular participation in the process of constitution-making:

> "The endorsement of the Constitution by the electors might very well be invited in a direct manner. This should take place not through the usual method of a general election; a direct appeal quite apart from the personnel of Parliament should be made to the electors of the country as to whether or not they are in favour of any constitution prepared for them. Something in the form of a referendum should be provided on an occasion of such vital importance."[44]

A year later he baited the Conservatives of the first Convention (which was not popularly elected):

> "*Cockburn*: 'I should be surprised if any objections were taken to the proposal that before this [draft] constitution becomes law it will be referred to the people themselves direct. I should like to know if any honourable member of the Convention holds a different opinion?'
> *Gillies*: 'Certainly, dozens do!'
> *Sir Samuel Griffith*: 'I do for one; I think it is absolutely impossible!'
> *Cockburn*: 'I am surprised. This is such an alteration from present constitutions that it amounts practically to a revolution, and surely in a case of this sort, where there is such a complete departure from the conditions under which the people are at present governed, they are entitled to speak directly, to express their will through their votes and not to have to delegate their power of voting to anyone else'."[45]

Here as elsewhere Cockburn and the Liberals were championing the constituent power of the whole people, a conception which comes down from Rousseau through Madison, James Wilson and Jefferson amongst the Fathers of the American Constitution.

As the Liberals had a more comprehensive sense of the common people as a whole, so too they usually kept in sight the vision of the nation as a whole. Kingston expressed the feeling of the Liberals, even from the small colonies, when he said:

> "I would not hesitate to recollect that my first duty is not simply to the State which I have the honour to represent, but to the nation which is to be. I think that on a previous occasion some of us, honestly differing from the views of our colleagues, gave proof that we were prepared to separate ourselves from our colleagues in the representation of a particular state to secure what we believed to be the interests of Australia at large. If the occasion arose for similar action here we should not be found to hesitate to adopt it."[46]

Another of this group, Alfred Deakin, served as a persuasive diplomatist in effecting compromises with the Conservatives. He, at least, had a sense of urgency and of historical responsibility:

> "Political opportunities of this sort, if missed, rarely return again in the same generation . . . . We are the trustees for posterity, for the unborn millions, unknown and unnumbered."

He had no doubts about the efficacy of federation: he had even the hardihood in 1890 to prophesy that federation would bring

better men into politics. His own attitude towards the proposed new central government was undisguised:

> "Wherever we can detect a federal interest or power we should provide for it in advance, without waiting for public clamour or the long agitation leading up to an amendment of the Constitution. We should provide in advance for all conceivable federal contingencies, strengthen the Federal Government, and trust the Federal Parliament to use its powers wisely."[47]

There has been no more historically significant clause in the Constitution for the future of the parliamentary government of the Commonwealth than that inserted under Liberal pressure in 1898 giving the Commonwealth powers with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State" (Sec. 51 (xxxv)). The struggle for the acceptance of that clause well illustrates the persistence of the Liberals and their ability to win enough nominally Conservative support from time to time to gain a point

In 1891 Kingston had proposed the cession to the Commonwealth of full arbitration powers, but had met with no success. The men of property were not at that time of great strikes disposed to make such a potentially big concession, notwithstanding that in many trades and industries both employees and employers were already organized on an interstate basis. Liberals like Higgins saw plainly that, whether or not industrial peace within the Commonwealth was indivisible, at any rate the effects of industrial disputes would often be nationwide:

> "It may be said, 'Leave the industrial disputes to the States'; but it is well known that these disputes are not confined in their evils to any one State. If there is a shipping dispute in Sydney, it is sure to be felt in Melbourne; if there is a coal dispute in Newcastle, it is sure to be felt in Korumburra."[48]

There is not much doubt that all but those who *would* not, saw this. Certainly a big intercolonial maritime strike which preceded the 1897–8 Convention and a widespread engineers' strike in Britain (1897–8) could not be disregarded—in fact, they seem to have been instrumental in winning the majority of three for Section 51 (xxxv) at the Melbourne session in 1898.

Higgins had the ready support of fellow-Liberals like Isaacs and Kingston. The only Labour member, Trenwith, gave full support, pointing out that:

> "In the past it was possible for a number of men to strike and injure very few but themselves.... But our industrial system has become so complex that it is possible, and, indeed, it often happens, that the parties to a dispute are very few, but that the parties indirectly and seriously injured are very many."[49]

Two surprises in the debate were Sir Joseph Abbott's and Sir John Forrest's support of the clause. Protesting that he was

sometimes liberal, Forrest urged that the Federal Parliament "will be better able to deal with the subject, and will deal with it more moderately than the local parliament will be likely to do."[50]

Amongst the opposition to a federal conciliation and arbitration power was George Reid, who said that it would positively encourage the spread of disputes in order to bring them under Federal jurisdiction. With his usual shrewd political insight he foresaw the possibility of either party playing off State against Federal courts for more favourable terms.[51] Most of the real Conservatives like McMillan, Symon, Downer and Wise, opted solidly for undiminished State powers in this field. Significantly Barton and O'Connor, the future High Court judges (and Griffith, though not a delegate to the 1897–8 Convention) took the Conservative view. The Victorian Conservative, Sir William Zeal, had the doubtful distinction of apparently speaking for the clause and then appearing amongst those who voted against it. Zeal and Fraser were the only Victorians who opposed the clause: they were the only members of the Victorian Legislative Council in their delegation. Sir Joseph Abbott was the only one of the ten New South Wales delegates to vote *for* the clause.

In view of the momentous later history of Section 51 (xxxv) certain facts should be noticed. First, Quick and Garran, in writing the historical introduction of 252 pages to their monumental constitutional study (1901), thought so little of the importance of this clause as to omit any discussion of it. Quick, incidentally, had voted for it in 1898. Second, thirty members of the 1897–8 Convention were members of the first Federal Parliament, which in 1901 voted unanimously but abortively in both Houses for complete Commonwealth powers over hours, wages, and conditions of labour.[52] In the Parliamentary debate on Higgins' 1901 motion, men like Barton and McMillan now came out strongly for Commonwealth powers.[53] Third, there is every reason to believe that the movers of the clause in 1898 really meant that power over "disputes" should be ceded, not that the power should be only in respect of a particular *method* of preventing or settling disputes.[54] In the Adelaide session Higgins originally moved the clause as "industrial disputes beyond the limits of any one State" but was persuaded by Kingston to give it the form which it has to-day. Kingston held that such a change would strengthen the clause: in fact it has narrowed and weakened it.[55] As Sir Robert Garran has written:

> "There may be other and better ways (of preventing and settling disputes), but the Commonwealth cannot explore them—they are exclusively vested in the States."[56]

Nor has the Federal Parliament control over the results and consequences of the decisions of Commonwealth industrial courts

and tribunals. Fourth, the clause is a warning against any narrow particularization of the constitutional powers of National Parliaments. Lord Selborne wrote to the Australian Prime Minister in 1908 to ask advice on constitution-making, as the Union of South Africa was then being created. Deakin and Garran wrote back a warning based explicitly on the lesson of Section 51 (xxxv):

> "The specific powers should be defined in words as general as possible, avoiding as far as possible all conditions, exceptions and limitations."[57]

Labour and Democratic Nationalism.

Not unnaturally, the Labour Party, which was founded in the year of the first Convention, 1891, included a federation plank in its first platform. Clause 12 committed the Party to "the federation of the Australian colonies on a National as opposed to an Imperial basis."[58] That precise wording was due to contemporary fears on the Left that the Imperial Government would have a finger in any colonial constitutional pie and would press for Australian federation as a step towards Imperial Federation—an objective opposed by Labour, as involving partial loss of Australia's self-governing status. This fear was not without foundation: even some of the advocates of Federation—Alfred Deakin, for instance—were also advocates of Imperial Federation. The Labour Party, on the other hand, was from its inception a strongly nationalist body.

Labour was far from standing for federation-at-any-price. George Black made this clear to the New South Wales Parliament in July, 1891:

> "Speaking on behalf, I think, of the Labour Party, I need have no hesitation in saying that the Federal Bill, as drafted by the [first] Convention, is not one that is likely to meet with their support."[59]

A Labour amendment in the New South Wales Legislative Assembly on 12th October, 1893, said that the Bill, as it stood then, was "of too rigid a character to suit the progressive character of Australian democracy." It went on to charge that "federation would do nothing to meet the social and industrial problems so urgently pressing for solution." A great number of the rank and file were opposed to federation as one of the measures which, in the words of the platform, "do nothing for the people." Such judgments were based, of course, on the conservative 1891 Draft Bill. Labour knew that many of the men of property openly sought federation as a measure to counter the growing power of militant Labour. As the Labour propagandist said, with picturesque exaggeration:

> "Now, the coincidence of the Federal Convention having been called together, immediately following the recent Labour troubles has, so far,

attracted no special attention from public writers or speakers. That the movement was remarkable and precipitate has been recognized. Remarkable and unexpected as was the convoking of the Federal Convention, still more remarkable and unexpected was the unanimity arrived at by the representatives of colonies whose interests lie as wide apart as Free Trade is from Protection, as the north is from the south .... Now a Federal army to fulfil the ostensible object of protecting the colonies from invasion would, of course, be large and of miscellaneous parts .... How necessary a Federal Army! .... If New South Wales soldiers, actuated by patriotic motives, refused to fire upon their own countrymen it should be competent to march in Victorians or Western Australians, to effect the purpose. Thus can Queensland squatters get their sheep shorn with Victorian bayonets; South Australian bullets arbitrate with Victorian dock-labourers; while New Zealand gatlings and Tasmanian Nordenfeldts would be a strong argument to return to work in a coalminers' strike in New South Wales. Thus would single-sticks, not single-tax, become the law in every colony .... As to the questions at present exciting angry discussion between public writers and speakers, questions as to the internal structure of the Federal Constitution .... these are mere matters of detail. The first and principal object of Federation, as declared by the President of the Convention, is the formation of a Federal Army. This is the substructure upon which all else is reared. And what is it but a design on the part of the rich, for the oppression of the poor: a mighty engine in the hands of employers for the coercion of Labour!''[60]

These fears were not confined to the Labour Parties of the more advanced colonies. The Leader of the party in South Australia declared to the Legislative Assembly of that colony:

''The Federal movement presents a certain amount of check on the democratic movement. The masses think it is an attempt to get advantages for the classes.''[61]

One of his colleagues made an even bolder estimate:

''Those who want federation at any price only want a constitution strong enough to batten down their political opponents.''[62]

But at the 1896 New South Wales Labour Conference, W. M. Hughes insisted that, whatever their misgivings, the Party must take up a firm position on Federation. That was the realistic appreciation of the political situation: the popular Federation movement from 1894 onwards had made it impossible for Labour to swim against the stream. The result of Hughes' urging was a full ticket of ten Labour candidates for the 1897 New South Wales election of Convention delegates. Labour men stood in the other colonies, too. In the New South Wales Parliament, Hughes unsuccessfully pressed for the representation of the colonies at the Convention in proportion to population.[63] The New South Wales Labour Party policy for the 1897 Convention elections included these items:

''A one-chambered Parliament elected on the basis of one adult one vote, headed by elected Ministers, and controlled by the Initiative

> and Referendum. We proposed to hand over to the Federal Parliament not only all the powers now conferred on it but also the complete control of the Railways and the Public Debts. State Rights we supposed to conserve by vesting in provincial legislatures the control of Crown Lands, irrigation, State banking, mining and factory legislation, education and public health[64] .... We demanded the maintenance of majority rule .... Above all things, we insisted that the Constitution should be made flexible by vesting its amendment in a majority of the whole people without reference to the States in which they resided."[65]

Here was the same steady conviction of the inalienable constituent power of the people and the same democratic faith in real majority rule already noticed in the Liberals.

In general, it appears that Labour speakers in 1897 wanted a greater amount of federal power than ultimately was allotted: some were definitely attracted by the Canadian rather than the United States Constitution. Hughes urged fiercely that all Federations of the nineteenth century (i.e. all *since* that of the United States of America) provided for the supremacy of the majority will.[66] Some Labour men still chafed at the rigidity of the draft Constitution and its method of amendment—"people should be able to extend their liberties without bursting the Constitution every time."[67] There is little doubt that Labour leaders consistently desired a system of unfettered Parliamentary sovereignty (unfettered, that is, by judicial review as the United States of America had come to know it).

The belief in referendum, initiative and recall (to which Labour is still nominally wedded) was forced onto the Labour platform in those days by reaction against the Conservative entrenchment in colonial Upper Houses. Labour did have the perspicacity in 1897 to see and proclaim that the Senate was never likely to act as a States' House, but rather as a Class House and as a body where men took their seats months after winning them (while outgoing Senators could carry on, obstruct and draw salaries). But Labour apparently did not realize that the Senate would prove to be a Class House in which their own class and party would sometimes hold sway, even, on occasion, when their opponents had control of the Lower House.

Judged by the pronouncements of the Party and its candidates in 1897, Labour can hardly claim a higher degree of prescience than the more forward-looking Liberals and Conservatives—and in some directions rather less. The truth is that Labour was more deeply concerned with social problems than with federation, and was not altogether free of confusions about the interconnection of the two. At the same time Labour's federation formula was woven of basic, if sometimes academic, democratic principles. Moreover, forceful Labour opinion of the years up to 1898 had an effect on the successive stands of

George Reid and others who were in a position to force more democratic forms into the Constitution Bill. But it is certain that Labour's one representative at the second Convention—W. A. Trenwith of Victoria—could have done nothing without the great Liberals in that assembly.

An instance of Liberal championship of causes very dear to Labour occurred in the struggle over Privy Council appeals. The dependence of the Australian mercantile and financial interests on Britain in the 'Eighties and 'Nineties was very great. Their relationships with Britain were of a very different sort from those of most Australian manufacturers to-day. It is hard to recapture the "atmosphere" of those days of British free trade, when even colonial merchants saw the colonies as simply an extension of the English market itself. There were as yet few strains and stresses in the Imperial economy as a whole. This all made the "Imperial link" a matter of great tangible importance to the spokesmen of the merchants, financiers, and shipping interests in the successive Conventions and in the popular Federation campaigns. One of the elements in the "Imperial link," for retention of which these interests fought tooth and nail, was the Privy Council Appeal. They fought for it till the Bill reached the House of Commons:

> "You will remember that, when the Commonwealth Bill drawn up by the Conventions went to the British Parliament, Mr. Chamberlain took a rather extraordinary attitude. He did not mind whether the appeal on constitutional questions was stopped, but he did not want the appeal in private cases stopped, because he said that the big shipping companies and mercantile interests desired the right to appeal to the Privy Council. I consider that to have been an extraordinary bad reason for the actions he took."[68]

Men like Sir Joseph Abbott, Sir William Zeal and J. T. Walker brought all possible, and some impossible, arguments to bear. They pleaded the necessity of uniform interpretation of law throughout the Empire. They pleaded the desirability of a final decision from judges who had no possible personal axe to grind. The pleaded the superior ability and prestige of the English judges. They pleaded in particular for retention of appeals to the Privy Council from the State Supreme Courts:

> "The enormous investments of English money in the Colonies, and the importance of supporting Australian credit at a time when several of the Colonies were still suffering a recovery from financial disasters, made the commercial interests favourable to a tribunal, submission to which might be regarded in England as a pledge of good faith.... Finally the discussion was caught in the tide of loyalty which swept over the country during the Boer War."[69]

In general their arguments were offensive to the growing Australian nationalism of Liberals, Radicals, and Labour men.

The nationalists, inside and outside the Conventions, were ready with answers to mercantile and monied interests. They held Privy Council judgments and strict Imperial uniformity of interpretation unnecessary for the welfare either of Australia or the Empire. Higgins pointed out that British capital had not been scared to go to the United States of America—why should it be scared to come to Australia if there were no Privy Council appeals? It was held that Privy Council appeals would be beyond the means of the average private litigant, that this would weight judgment in the direction of the big interests and the rich individuals, and that this would perpetuate the exploitation of the Australian community by overseas interests. Much time was already wasted by such appeals. It was alleged that Privy Council judges had ideological and class axes to grind like any other judges. The Liberals held that only Australian judges could know the full extent of local circumstances and conditions bearing upon cases.[70] Higgins (who was, of course, a lawyer and subsequently a judge of the Australian High Court) even threw ridicule upon the Privy Council:

> "It is like a backwater of the English law, and the English courts refuse to be bound by its decisions."[71]

He was certain Australia could produce judges of at least equal calibre.

On this occasion Issacs, Higgins and Deakin found support from Symon and others who rarely voted with them on crucial issues. These men all took the challenging attitude of Higgins: "Who cares about the Privy Council or the Privy Council appeals?" Or, as it was equally firmly put on another occasion, in answer to Joseph Chamberlain:

> "The consciousness of kinship, the consciousness of a common blood and a common sense of duty, the pride of their race and history—these are the links of Empire; bonds which attach, not bonds which chafe. When the Australian fights for the Empire, he is inspired by these sentiments; but no patriotism was ever inspired or sustained by the thought of the Privy Council."[72]

In fact, though some concessions were made to the British viewpoint, the Liberals (and the Labour men and nationalists for whom they also spoke) were substantially successful, as the Judiciary clauses of the Constitution and subsequent rulings of the High Court reveal.

The Small States and States' Rights.

In its most general terms the "Small States" or "States' Rights" view was concisely put to the 1891 Convention by Cockburn:

> "We know that the tendency is always to the centre, that the central authority constitutes a vortex which draws power to itself. Therefore, all the buttresses and all the ties should be the other way,

> to enable the States to withstand the destruction of their powers by such absorption .... Government at a central and distant point can never be government by the people, and may be just as crushing a tyranny under republican or commonwealth forms as under the most absolute monarchy."[73]

The central or federal government, it was argued, should therefore be given as few powers as possible. Colonial budgetary troubles during the depression in the mid-'Nineties made leaders like Sir George Turner suspicious of any potential general taxing rival. Indeed one of the principal effective arguments used by the federalists when the Commonwealth Bill was finally put to the people was that the Commonwealth would need only £300,000 a year to carry out its enumerated functions.

United States' precedents were the stock-in-trade of the "States' Rights" men. At the same time they were quite ready to jettison those precedents in cases where, as in the matter of the size of the House of Representatives, these were contrary to their interests.[74] Similarly when South Australia, which then wanted the waters of the Murray for navigation, found itself in a minority against Victoria and New South Wales, which wanted the Murray for irrigation, that colony did not hesitate to urge the other two to "trust the Federal Government" with powers over navigable rivers, in the hope that it might yet get its way.

Central to the position of the "States' Rights" spokesmen was their idea of the constitution of the Senate. It must, they urged, be founded alike in equal representation of the States and in equality of status with the Lower House in respect of powers over all classes of legislation. Thus the "States' Rights" men and the Conservatives joined hands in demanding a strong Senate. They pointed to the example of the United States Senate. The "States' Rights" party wanted not only full security to the States of the powers specifically or residually theirs, but equality of State representation in the Senate in order to exercise the fullest control over even the powers enumerated as national. To this end Sir Samuel Griffith, then Premier of Queensland, who usually expressed strong "States' Rights" views, was quite prepared to abandon the British principle of responsible government.[75] He even used his legal authority to argue that, since responsible government had never been "written into" the British constitution, Australians need weep no tears over and would certainly be none the worse for a sudden break with the tradition in which they had all been brought up.

Piddington goes so far as to say that Griffith came to the 1891 Convention with a draft of the Constitution already prepared on the United States model.[76] Another influential member of the first Convention, Inglis Clark, Attorney-General of Tasmania, had travelled in America and was a zealous exponent of the

United States system. Similarly, Barton and O'Connor, later to serve with Griffith on the High Court as the first interpreters of the Constitution, were clearly susceptible, as lawyers, to the intellectual and legal subtleties of the United States model. As Sir William Irvine ruefully remarked in 1910:

> "One thing which strikes one .... is what seems to be the too rigid adherence paid to the ancient model of the United States Constitution .... When the Convention was in doubt the form of the American Constitution was, in most cases, followed .... But the result, rightly or wrongly, was that in Australia at the present time we live under one of the weakest federal unions in the world."[77]

No man finds it easy to destroy or turn his back on something to which he has given years of his life. The Fathers of our Constitution had given years to the public life of their several colonies: they did not desire to denude the old units of all significant powers for the sake of the new authority. Though many of them aspired to Commonwealth politics, they had yet to break with their old allegiances. To retain powers for the States was, so to speak, to vindicate their own past. The "States' Rights" leaders, as has already been suggested, received ready support from many of their party followers and public servants who feared for their careers or status. They were supported, too, by all the manufacturers and merchants who had interests narrowly vested in particular colonial markets. These were not restricted to business men of the smaller colonies— the manufacturers of New South Wales looked with apprehension on absolute interstate free trade, and certain Victorian farming interests opposed, in 1891, any possibility of New Zealand participation in Australian federation.[78]

The "States' Rights" group and the Conservatives found themselves often in agreement. Nowhere, perhaps, is the curious mixture of class and States' rights better exemplified than in the Tasmanian Braddon's argument that popular election of Senators was a concession by the small colonies comparable with a concession of the Senate's right to amend money bills, which he hoped the larger colonies would make.[79] At the same time, it must be recognized that all supporters of the "States' Rights" or "Small States" viewpoint were not Conservative. Even in 1891, for instance, a majority of the South Australian House of Assembly proved to be in favour of the popular election of Senators and of popular referenda on constitutional amendments. It was significant that, by the time of the 1897–8 Convention, most of the defenders of equality of Senate representation rested their case on the argument of sheer expediency (that it was a necessary sop to the small States to win their adherence) rather than on grounds of abstract federal theory.

> "But a suggestion by the Legislative Assembly of Victoria that the right of equal representation in the Senate should be conceded only

to original States was accepted; so that equal representation stands in the Constitution as a compromise, not as an essential principle of a federal union.''[80]

Some of the doctrinaire ''States' Rights'' federalists—notably those who were great admirers of the United States model—seem to have been blind to contemporary trends of Australian politics. Sir Samuel Griffith and Macrossan do appear to have foreseen the inevitable party nature of the Senate representation,[81] but Cockburn, good Liberal as he usually was, rushed into wild analogy and false prophecy in 1897:

''. . . . Politics in America are dominated by huge party machinery which deals with legislation, and, to a great extent, with administration. Those parties would never allow any coercion to be applied to any State, or any of its rights to be interfered with, because, if they did, they would lose their influence in States on which the predominance of their party might depend. . . . But there would be [in Australia] no great parties watching each other with the keenest possible eyes in order to see that no injustice was done to any of the States with the smaller populations. . . . I do not think that we should have party government, or party spirit, in this Commonwealth, as we understand it in our parliaments now. . . . As to the parties in the Commonwealth being divided into conservative and liberal parties, from any thought and reading I have given to the matter it is the most arrant nonsense possible.''[82]

Such false prophecy was acutely challenged by that supreme realist among professional politicians, George Reid:

''*Cockburn*: [in the midst of a tirade against central government]: 'Take ocean beacons and buoys and light-houses. . . . In the administration of those matters you may make one port and mar another.' *Reid*: 'The Government will not act in such a manner, it will live as quietly as it can'.''[83]

Answering the ''States' Rights'' group on another occasion, Deakin pointed out that:

''All arguments against us are based upon imaginary extraordinary instances in which two populous States united to oppress their fellows, a contingency, which will never, in my opinion, occur.''[84]

Sir Henry Parkes had earlier held that the needs of a States' Senate to protect States' interests simply did not exist.[85] But the theories of ''States' Rights'' and the hold of local interests were beyond the power of rational argument alone to dissipate.

Unificationists, Parliamentary Supremacy and Responsible Government.

As early as 1853 there seem to have been popular champions of unification: in that year Shoalhaven District residents petitioned for a conference to arrange for a single Constitution for Australia. Certainly throughout the final decade of the federation campaign unificationists were not lacking.

At the 1891 Convention, Cockburn was regretting that "we have heard several able advocates and veteran statesmen urging unification."[86] At the 1897 Convention he is again on record as regretting that "some of the speeches delivered by honourable gentlemen from the other colonies have struck me as being much more towards unification and towards the abolition of local parliaments than I desire to hear."[87]

Long afterwards, Sir Isaac Isaacs quoted an American authority as saying of the British unified system, "this was the type of government for which Hamilton contended, and which the majority of the delegates in the [American] Federal Convention really favoured. But the difficulty of securing the adoption of a Constitution framed on this plan made it impracticable,"[88] and commented: "the same position existed in Australia in 1897–8 and there is reason to believe exists at the present time."[89] Sir Joseph Carruthers, sometime Premier of New South Wales, told the Royal Commission on the Constitution that "those who have followed the movements for federal union prior to its consummation know that there was a big fight for unification. Some people wanted to have one Parliament for the whole of Australia."[90] Sir Henry Parkes appears to have been in favour of unification at first[91] and he himself said that in 1889 he urged union on the Canadian rather than the United States model.[92]

But the chief exponent of unification in New South Wales was Sir George Dibbs—as Wise, one of the federalists, said, his was "a temperament to cut the knots instead of unravelling them." At the 1891 Convention Dibbs urged unification. On 22nd May, 1894, he made his famous unification speech at Tamworth. On 12th June of that year, as Premier of New South Wales, he repeated his Tamworth arguments in a letter to the Victorian Premier, Patterson. What had confirmed him in his opinions of 1891 was the fact that "the fiasco of the banking crisis found us so injuriously divided." He objected to the draft Federal Constitution of 1891 as being too American, too little Canadian; as providing for "unthinkable" equality of State representation in the Senate; as providing for an expensive duality of government and administration; as saddling some parts of Australia with unfair and unworkable financial provisions; and as perpetuating old rivalries by failing to secure federal control over public debts, railways and land revenues.

> "How far more beneficial in every way; how far more likely to extend our revenues and minimise our expenditure; how far more impressive to the outside world and to our creditors in England, would be the complete pooling of our debts, our railways, our national establishments generally. We are none of us so badly off we cannot be permitted to meet each other on equal terms.... We would give to the United Government that prestige and supreme

control which is almost entirely denied under the Commonwealth scheme, wherein the Federal Legislature would be numerically and structurally wholly overshadowed by the provincial Governments; and without haggling over the items we would be prepared to hand over our customs houses, post-offices, and the other necessary establishments for the common good, provided others do the same.''[93]

In suggesting the taking over of colonial debts Dibbs was at one with men as different as the Queenslander, J. M. Macrossan (at the 1890 Melbourne Conference) and Archibald of the ''Bulletin''.[94] But there was bitter opposition from free-traders like George Reid, who were sure that the taking over of debts would make inescapable a high tariff to cope with the interest bill: ''I will not,'' declared Reid in 1891, ''put my principle of free-trade in the power of the Victorian protectionists.''[95]

As a matter of practical politics, Dibbs foresaw the likely economic hegemony of Melbourne and Sydney and the reluctance of the smaller States, on that account, to accept unification immediately. He suggested a way of reaching full unity by stages:

''It would be easier first to completely unify the interests of the two great colonies of Victoria and New South Wales, and then to attract neighbouring colonies within the sphere of our extended influence.''[96]

In Victoria men like Isaacs and Higgins wanted a powerful central government; one 1897 Convention candidate—Purves—came straight out for the abolition of colonial parliaments. David Syme of the ''Age'' was opposed to all the ''small State'' claims regarding Senate powers. In New South Wales and Queensland there were New State movements at the very time of the Conventions. Some of the spokesmen of these movements—in New England, for instance—favoured the federal form of union; others—notably in the Riverina—were for unification on some such basis as the Labour Party subsequently urged in 1919. In South Australia a future State Premier, Tom Price (Labour), spoke out for unification:

''Looking back on the American Constitution, written and hidebound, which the people could not break through to give effect to their new aspirations of liberty, we can see that we are bound within the four corners of an Act and this judicial millstone is now the greatest curse that hangs around the necks of the thousands of workers here to-day.... I believe more in an Australian union than a hidebound Federation.''[97]

Like many Liberals and Labour men to-day, Price urged unification as a means of throwing off, once and for all, the incubus of the colonial Legislative Councils.

The vogue which the Canadian Constitution enjoyed with many people at the expense of the American in 1889–1891 seems to have faded abruptly once the 1891 draft was made with a United States twist. Many gave up their Canadian preference

when small States' spokesmen dug their toes in. This change was particularly noticeable amongst the lawyers. Deakin, for instance, preferred the Canadian form in 1890,[98] but had shifted his allegiance in 1891. Syme's "Age" (of which Deakin was for years a staff member) similarly switched. Any support subsequently accorded to the Canadian Constitution came too late: too many minds were made up. Piddington tells how George Reid developed a late affection for the Canadian forms:

> "When the Sydney sittings of the [1897–8] Convention were halfway through, Mr. Reid, in whose party I then was, with his finger marking a place in Sir Robert Garran's book, *The Coming Commonwealth*, which he had been reading for the first time, said that if he had only known more about those things when he had started, he should have gone for the Canadian model rather than for the American."[99]

The much later opinion of Sir Josiah Symon, a "States' Rights" leader from South Australia in the 1897–8 Convention, is of interest:

> "I do not hesitate to say that it was anticipated we should have a reduction of members in the State Parliaments, and also, if possible, in the expenses of Government administration. It was thought, I do not say it was universally thought, that probably there would be some changes in the selection and appointment of Governors in place of Imperial appointment."[100]

A judge of the present Australian High Court (Sir Owen Dixon) reminded the Royal Commission on the Constitution:

> "Nor have we forgotten that a federal form of government represents a compromise, and that the theory upon which it rests as a political device includes the supposition that it will serve during a period of transition while peoples separately governed may find it possible to unite more closely under a less rigid constitution."[101]

Another witness, speaking for the Trade Union movement, was very sweeping on the point:

> "It is safe to say that when the people of the Commonwealth adopted the present Constitution by referendum, at least seventy-five per cent. of those who voted in favour were under the impression that by doing so they were taking a long step forward towards the complete unification of Australia."[102]

Behind the unification principle in the minds of many of its exponents, and in particular amongst its Liberal exponents, were two further fundamental principles under which Australians and Englishmen had grown up. Indeed they were the quintessence of five or six hundred years of parliamentary development. These were the principles of parliamentary sovereignty and of responsible or cabinet government.

Parliamentary sovereignty meant, above all, the absence of any judicial review of legislation wherein the judges had power

to pass upon the constitutionality of statutes. Federalism, with its written, rigid division of powers between central and provincial legislatures, was, at least since the American Chief Justice Marshall's time, founded upon judicial review. Federalism therefore meant the abandonment of parliamentary sovereignty, not merely by the Commonwealth Parliament which was to be, but also by the State Parliaments which had enjoyed such sovereignty (subject to certain royal prerogatives and Imperial limitations) since their respective grants of responsible government.

Responsible or Cabinet Government meant that the British Executive was necessarily both in and of Parliament and was at all times responsible to Parliament and dependent for its retention of office upon the pleasure and support of at least a majority of the Lower House. For in more recent years the Lower House had had primary care of finance, the lifeblood of government. The American (or "Congressional") form of government, on the contrary, meant an Executive formally separate from Congress, equally strong in a direct mandate from the people, and quite possibly at loggerheads with the legislature throughout its term.

At the 1891 Convention, Cockburn explained clearly the magnitude of the leap the people of Australia would be taking in adopting Federation (especially if of the American variety) to the exclusion or partial exclusion of their accustomed British practices:

> "All our experience hitherto has been under the condition of parliamentary sovereignty. Parliament has been the supreme body. But when we embark on federation we throw parliamentary sovereignty overboard, Parliament is no longer supreme. Our parliaments at present are not only legislative, they are constituent bodies. They have not only the power of legislation, but the power of amending their constitutions. That must disappear at once on the abolition of parliamentary sovereignty. No parliament under a federation can be a constituent body; it will cease to have the power of changing its constitution at its own will. Again, instead of parliament being supreme, the parliaments of a federation are co-ordinate bodies—the main power is split up, instead of being vested in one body. More than all that, there is this difference. When parliamentary sovereignty is dispensed with, instead of there being a high court of parliament, you bring into existence a powerful judiciary which towers above all powers, legislative and executive, and which is the sole arbiter and interpreter of the Constitution. Therefore it is useless for us to hope that we can, at the same time, have the advantages of a federation and retain the advantages of that elasticity which has hitherto given birth to our greatest privileges. Even responsible government, which we have learnt to revere so much, has simply been a growth under the shelter of parliamentary sovereignty. We do not know that the parliamentary responsibility of ministers can exist under any other conditions. We have not

seen it exist in the United States or in Switzerland, and we have no reason to suppose it will be compatible with the conditions of federation here. I am inclined to think it will not."[103]

Sir Samuel Griffith wanted the Constitution to say that the Executive *might—not* that it *must*—sit in Parliament, leaving it to Parliament to suit the practice to its wishes and convenience from time to time. Inglis Clark, true to his American sympathies, was for an independent Executive. Winthrop Hackett told the Convention that, "either Responsible Government will kill Federation, or Federation will kill Responsible Government." He was, as were Griffith and Clark, a member of the "States' Rights" group, thinking of Federation in the strict American pattern, where the two Houses should be co-ordinate. Most of the delegates from the larger States, and powerful men, like Syme "the dour old democrat of the 'Age'," in the background, were equally determined that the Lower House should be ultimately (especially in money matters) supreme. Liberals and Unificationists went further: they were almost uniformly insistent on Responsible Government and most were insistent on parliamentary sovereignty.

There were special reasons why the 1891 Convention was inclined to favour an independent Executive and an end of parliamentary sovereignty. There was a preponderance of "Small States" men and Conservatives. The former wanted a "strong" Upper House, the latter a conservative Upper House. It was, further, a fact that there had been a certain amount of cabinet instability in the colonial Parliaments in the years just before 1891. Nor were the colonial cabinets' and Parliaments' handling of the great strikes of 1890–91 conspicuously successful. Some felt that an independent Executive would be firmer.

By 1897 circumstances had changed. Most delegates were popularly elected. Generally speaking, the colonial cabinets had handled the bank and land crashes well. Ministries in the period 1891–97 had been more stable. The popular element in the campaign from 1894–97 undoubtedly had something to do with the more general demand in 1897 for parliamentary control over the ministers. The popular following was readily convinced that opposition to responsible government came only from Tories who wanted to make the Senate just another bulwark of Property, like the Legislative Councils in the colonies.

In fact, "there was no more notable feature in which the Convention of 1897–8 differed from the Convention of 1891 than in its unquestioning acceptance of the Cabinet System."[104] Higgins told the Second Convention that "the whole of our system of Responsible Government turns upon the way in which you deal with Money Bills."[105] In that regard Deakin insisted that "were the responsibility with the House of Representatives, the

public could then lay its fingers on the records of the House where the disputable points arose and could drive home responsibility where it ought to rest."[106]

In answer to Sir Richard Baker's "Small State" viewpoint (Baker in 1897 declared for the Swiss type of Executive), Deakin answered:

> "I question the applicability of Sir Richard Baker's metaphor that the Federal Senate is to be the pivot of the Constitution. It appears to me that the responsible government which we are inaugurating will be the pivot of the Constitution, and the support of that pivot will necessarily lie in the National House."[107]

And on another occasion:

> "Surely the Hon. Gentleman is putting behind him the experience of a lifetime, when he says that with two co-ordinate Chambers responsible government as we know it can be carried on."[108]

As late as January 1898 Piddington feared that the Senate would upset the equilibrium of responsible cabinet government:

> "However he secured election, the Senator of Australia would be a man wearing the star and garter of a vast constituency whenever he rose to speak; and how would such a magnifico compare, in his own esteem or that of his province or of the nation or of the outside world, with the inferior creature who is returned to Parliament by the fraction of his own electorate—the whole colony? Add to this the longer duration of his office (six years instead of three), the glamour of his quasi-ambassadorial function, and the greater manageability for business or debate of a small chamber, and, whatever the strictness with which equal powers are assigned to the two Houses by statute, the Senate must become the more powerful engine of legislation. Can it be supposed that such a body, comprising the strongest and most ambitious politicians of the continent, and animated by an "esprit de corps" of unusual intensity, would be content to be ignored for long in the formation and control of the Cabinet? Every victory over the Lower House in matters of legislation .... would increase the Senate's prestige and makes its share in the Executive Government a matter of course."[109]

Had his premises proved to be accurate his fears certainly would have been justified: but the American pattern dazzled its critics as well as its exponents. In fact, the Senate's power to amend money bills, at first adopted by the 1897–8 Convention, was again rejected by two votes after long debate, despite the fact that in 1898 direct, popular election of Senators had replaced the indirect election of the 1891 Draft. As under the "1891 Compromise," the Senate retained the right to "suggest" amendments to the Lower House—a practice obtaining in South Australia for years before Deakin won its acceptance for the Commonwealth in the first Convention.

George Reid took credit for depriving the Senate of power over

tax measures: he said that Senate power in that field would be —in Kingston's words—"the forfeiture of responsible government." Actually some share of credit must go to Kingston and a few others who, disregarding the "States' Rights" "line," voted with the delegates from the larger colonies.

Cabinet Government is, in fact, clearly implied in Section 64 of the Constitution, which reads (in part):

> "After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a Senator or a Member of the House of Representatives."

Yet nominally, as Sir Harrison Moore has pointed out, "there is no recognition of the Cabinet, for the Federal Executive Council is not necessarily identical in constitution or functions with the Cabinet. There is no recognition of the collective responsibility of the Ministers of State; Section 64 treats them as separate administrative officials; and there is no hint of a Prime Minister."[110] But in Britain the collective responsibility of Cabinet is a constitutional convention and not a statutory provision of Parliament, and the Prime Ministership itself has only in very recent years received statutory recognition in that country.

IV

The whole process of constitution-making which spanned the final decade of the century represents an exercise by the people of Australia of their "indubitable, unalienable and indefeasible" constituent power of revising the whole basis of their government. They, the sovereign people, withdrew a limited number of the powers and functions previously vested in their colonial legislatures and jointly transferred those powers and functions for the future to a Federal Parliament. The growth and development of the nation, as they saw it, made such an instrument more appropriate for the exercise of those powers.

There was no more finality about the new allocation of powers made in 1900 than there had been about the framework which had existed prior to that time. By the warrant of that theory of popular sovereignty which comes down through a long and honourable lineage, the Australian people retained and still retain the power of total revision, even apart from the present amending power, though the latter would be its normal vehicle. As a modern exponent of the theory of popular sovereignty has written: "No matter how elaborate the provisions for an amending power may be, they must never, from a political viewpoint, be assumed to have superseded the constituent power."[111]

The absence of finality in any constitution is widely recognized. Whether it is a British Prime Minister, an Australian

Constitution-maker, or an American historian who testifies, the story is similar:

> "The historian can tell you probably perfectly clearly," said British Prime Minister Baldwin, "what the constitutional practice was at any given period in the past, but it would be very difficult for a living writer to tell you at any given period in his lifetime what the Constitution of the Country is in all respects, and for this reason, that almost at any given moment.... there may be one practice called 'constitutional' which is falling into desuetude and there may be another practice which is creeping into use but is not yet constitutional."[112]

> "I do not care in what way you frame the Constitution," said Sir Richard Baker, "the people of Australia will mould and modify it in accordance with their ideas and sentiments for the moment, although its outward form may remain the same."[113]

> "The theory that the Constitution is a written document is a legal fiction," assert Charles and Mary Beard. "The idea that it can be understood by a study of its language and the history of its past is equally mythical. It is what the government and the people who count in public affairs recognize and respect as such, what they think it is. More than this. It is not merely what it has been or what it is to-day. It is always becoming something else, and those who criticize it and the acts done under it, as well as those who praise, help to make it what it will be tomorrow."[114]

So it was that the victories and defeats of the Liberal, Radical and progressive elements in the Conventions, and in the federation campaigns, were in no sense final, though change through the amending process has proved so difficult. Property rights (beyond a compensation clause) were not written into the Constitution. On the other hand, the power to socialize property was given wholly neither to the Commonwealth nor to the States. The power and means to project a full scheme of social security was similarly given to neither. Powers to make uniform provision for industry—primary and secondary—and for trade and commerce were very substantially withheld from the Commonwealth Parliament by constitution-makers, who wanted to keep these things within reach of the Conservative Legislative Councils. Though the struggle for House of Representatives financial ascendancy was won and responsible government thereby secured, the sovereignty of Parliament disappeared with the elevation of a High Court to pass upon the constitutionality of legislative acts.

In a word, the Fathers of the Constitution weighted the scales heavily, as many of them thought, on the side of the social and economic status quo. Enjoying as we do an historical hindsight, we know now that at most they succeeded only in slowing down the trends to which many of them were opposed. A few of them saw how vain it was to attempt to dam up those trends.

Deakin was such a man. In 1902 he sketched with uncanny insight the next four decades of Australian history:

> "As the power of the purse in Great Britain established by degrees the authority of the Commons, it will ultimately establish in Australia the authority of the Commonwealth. The rights of self-government of the States have been fondly supposed to be safeguarded by the Constitution. It left them legally free, but financially bound to the chariot wheels of the Central Government. Their need will be its opportunity. The less populous will first succumb; those smitten by drought or similar misfortune will follow; and finally even the greatest and most prosperous will, however reluctantly, be brought to heel. Our Constitution may remain unaltered, but a vital change will have taken place in the relations between the States and the Commonwealth. The Commonwealth will have acquired a general control over the States, while every extension of political power will be made by its means and go to increase its relative superiority."[115]

The men of 1897–8 founded workable, democratic parliamentary government upon a national scale and a basis sufficiently flexible and capable of evolution to meet the needs of changing times. In so far as parliamentary government was the object of their labours they produced few novel departures. The institutions they created enjoyed the solid start which derives from operation by a people wholly accustomed to their traditional working. Broadly their Commonwealth Parliament and Government have been a success.

Unlike the Americans, however, Australians hold their Founding Fathers, for all their success, in no special reverence or regard. Many of them are already forgotten. Few are quoted, and then infrequently. This does not mean that Australians do not value their constitutional handiwork, though a repeated unwillingness to assent to amendment can hardly be construed as positive appreciation. It may, of course, be to the good that Australians do not steer their ship of state by the "obiter dicta" of the Founding Fathers—though Americans appear to have lost neither in flexibility, adaptability nor in willingness to experiment by their constant snatching of backward glances at the men of 1787. Yet there are times when Australians could do with a little more consciousness of their political roots, only to find, when they reach back, that they have cut themselves off by neglect from the facts and spirit of those times.

CHAPTER II

THE AUSTRALIAN ELECTORATE

"The people will live on.
The learning and blundering people will live on.
They will be tricked and sold and again sold
And go back to the nourishing earth for rootholds,
The people so peculiar in renewal and comeback,
You can't laugh off their capacity to take it."

Carl Sandburg.

"Without general elections, without unrestricted freedom of press and assembly, without a free struggle of opinion, life dies out in every public institution, becomes a mere semblance of life, in which only the bureaucracy remains as the active element. Public life gradually falls asleep; a few dozen party leaders of inexhaustible energy and boundless experience direct and rule."

Rosa Luxemburg.

I

OVER the past century the Australian electorate has enjoyed increasingly democratic politics. Individuals and parties maintain ceaseless free discussion of topical issues. The opinions and criticisms so formulated are constantly brought to bear on the popularly elected Government of the day. The weight of support—qualitative as well as quantitative—behind such representations is assessed by Governments. Members and parliamentary followers of the Government watch closely the currents of opinion amongst those many groups and associations into which an Anglo-Saxon community freely organizes itself and through which it speaks on social and political issues from day to day. For in our time it is usually the group rather than the individual which is effectively articulate. From the viewpoint of these groups and associations with ideas and policies to advance, but no ambitions to undertake the whole business of government, full and free discussion is the indispensable democratic medium.

The political mobilisation of the electorate and the actual conduct of government is the business of parties. They seek power through the ballot-box to appoint their particular Cabinets and enact their publicly-proclaimed programmes. Power depends upon the ability to attract and hold electoral and parliamentary

majorities under conditions of free and full discussion and regular general elections. It depends upon ability to reconcile conflicting social and economic pressures, to effect honourable compromises. Success in democratic party "warfare" does not depend simply on mobilizing an occasional formal electoral majority. Parties in power must, under this system, actively solicit popular approval for their administration from the beginning to the end of their tenure of office. At the very least they seek to avoid constant hostile criticism, especially that from the "floating" or unattached vote. They seek as a minimum the fairly continuous acquiescence of the electorate in the course they pursue. Though they can in part discount the criticisms and abuse of the zealots and professionals among their opponents, their hold on power depends on sensitive response to general public reactions. Politics are of necessity as continuous a business for parties as is the right of criticism the continuing concern of groups and individuals.

All this is no matter of small importance. It is something crucial in the life of a free society:

> "An election that can turn out one regime and install another is a revolution—a peaceful and lawful revolution. The measure of success of a democratic system is found in the degree to which its elections really reflect rising discontent before it becomes unmanageable, by which government responds to it with timely redress, and by which losing groups are self-disciplined to accept results."[1]

Democratic politics are based on certain assumptions, which the community as a whole must understand and accept if democracy is to flourish. Democrats assume that each citizen is capable of some contribution to the general welfare of the community and the management of its affairs, complex though these have become. They assume at least a minimum of interest in and knowledge of national affairs in all citizens: they assume the reality of the citizens' freedom of will. They assume that the whole adult population must be given reasonable equality of consideration by governing authorities and equality before the law. In basic social and civic matters each must count for one and none for more than one in the eyes of the State. They assume that the community must make provision—and reasonably equal opportunity—for the education of its citizens before they reach the age of full civil rights and duties. They assume a standard of personal and civil liberty, individual moral integrity, the mutual tolerance natural to a civilized people, and a consequent absence of arbitrary coercion from political and social life. They insist that democracy means majority rule. The democratic theory of government requires that "in the last resort the only limitation on the power of the existing majority is the principle of majority rule itself, as guaranteeing the eternal right of the

individual and the minority to work openly at all times toward the formation of a new majority."[2] A man in opposition can go his way in peace, earn his living,[3] and work feverishly for the defeat of the government of the day as soon as it can be brought to the polls.

These are the assumptions underlying the democratic faith in the sovereignty of the people. They are enormous assumptions, in practice Australians only approximate such standards; but unless they maintain them as their standards they are betraying democracy. The community must count these things so vital and necessary that in the last resort it will fight to defend them from external aggression or internal subversion.

The extent to which the whole people of Australia is at any time in fact democratically sovereign depends entirely upon themselves. Democratic citizenship is not a sinecure: its possessors must be capable of analyzing situations and events, weighing experience and testing political ideas. Real and sufficient education is the basis for such capacity. It depends, too, upon a sufficient access to an accurate picture of the facts and circumstances in the light of which popular power of decision is to be exercised. Free and honest news media alone provide that access. And there must always be the will to act upon informed judgments. Political party work in a stable democracy is not ordinarily exciting: it is rarely personally rewarding: yet it is vital to democratic continuity. The people of Australia as a whole may not always—or ever—be equal to the full demands of their democracy. While some sections of the nation may stimulate and assist the electorate towards the adequate exercise of its sovereignty, others may actively and calculatingly hamper and distract it from such exercise.

Certain it is that in the inter-war years the peoples of many countries proved unequal to the never-ending demands of democratic citizenship upon individuals. Their formal popular sovereignty proved in some cases to be essentially unreal. Perhaps it was not the fault of the bulk of the individuals that they had never been educated to the standards required of sovereign democratic peoples; perhaps the great majority was not to blame for the absence of honest pictures of the changing situations which confronted them. Wherever the fault may lie, too many reckoned democracy so unreal and so unsatisfying in practice that when it was challenged they stood passive, cynical, indifferent, divided. Fascism strode to power over their ignorance, complacency and acquiescence. Some even welcomed it. Opposition too frequently was neither apparent nor real.

Totalitarianism has not developed in Australia. But that is not to say that ignorance, cynicism and indifference do not exist in the Australian electorate. It is perhaps arguable that Australia has been neither conspicuously successful nor remarkably

imaginative in realizing the full potentialities of its political institutions. The "root-and-branch" critics and the cynics have, however, been neither strong, widely organized nor particularly outspoken. They do their work quietly, seeking to sap faith and confidence by laughs and sneers and malicious gossip and rumour.

The general danger in mid-twentieth-century public life, as in modern joint-stock business, seems to be that while there is more or less government *for* the people, or shareholders, there is relatively sporadic government *by* the people. The people exercise their prerogatives to grumble, criticize, urge and, in extreme cases, at stated intervals, to turn out their national executive or their parliamentary representatives. But, wrapped up most of the time in their private affairs, they are happy enough to leave government to the professionals and the enthusiasts.

If at this or that time, or on this or that issue, groups[4] within the Australian electorate are successfully exerting pressure in directions of their own selfish choosing, it is because the electorate as a whole is ignoring the facts, is more interested in other things, is unorganized in opposition, is temporarily indifferent as to ends, or is hopelessly divided as to means. Failure of this sort has never yet irrevocably befallen Australians. There have been periods when it seemed to be the case, but from time to time the people have sharply called a halt, as in 1929 when the Bruce-Page Cabinet threatened the existence of the federal arbitration system. At all such times the aroused will of the people as a whole has prevailed.

II

There is unfortunately too little vigour or interest in Australian local government, where energies could be usefully employed and trained for national politics. Democracy has to be "lived" and "felt," intimately, at first hand. Its processes have to be known, their difficulties, problems and limitations—above all, their possibilities. There must be "practice of shared responsibility in the organized activities of life." All that can be provided for people generally only in local government.

But in Australia local government has always been something of an after-thought, wielding a very few delegated powers over roads and drains and chicken-runs. Modern conditions of transport and circulation have allowed the metropolitan press to prevail against much of the local press of Australia. This has served to centre interest in State and metropolitan affairs, rather than in those of the reader's own locality. Most areas of local government in this huge, sparsely-peopled and far-from-rich country are in fact relatively poor dependencies of the economic

empires of Melbourne and Sydney, or at very least of the six State capitals.

It may not be true, as one critic has it, that in such areas "the spirit of independence has evaporated and the desire for change is non-existent." But there are few social or cultural services under local jurisdiction to attract the districts' humanitarians and intellectuals into their Councils; no reality of power to attract their more ambitious and brilliant residents; little tradition of local service to dignify the public offices of a shire or municipality. Some there are, of course, who do use them as stepping stones and apprenticeships to State and national politics. Too often, however, local government attracts only the selfishly interested elements of the district—real-estate agents, builders, contractors, and shopkeepers, most of whom hope that some indirect personal business gain will come from office; or local men of property who seek to keep rates down and push property values up. This is not to detract from the disinterested service of many Australian local councillors. Nor is it to condemn the often necessarily centralised administration and public finance of Australia, with its great arid centre and its relatively small fertile coastal strip. It is only to point out that, as a cradle of democracy, Australian local government is an inconsiderable and even perhaps a diminishing factor.

This deficiency in local government would not be so unfortunate if all parts of Australia were richer to-day in associations and groups which were really thoughtfully concerned with the common welfare or at least were giving men training in the handling and leading of their fellow men. But the growing complexities of everyday life in this country seem too frequently to have turned the individual in on himself and his family more than formerly. He has a greater array of personal responsibilities and his energies encounter a wider range of distractions and entertainments. What with his family, his garden, his car, his sport, the cinema and the radio, he has little time or inclination to attend as many trade union meetings, Australian Natives' Association debates or political gatherings as his counterpart did at the time of the campaigns for federation. He does not, because in some States he cannot legally, sit in the "pub" in the evenings, talking over events, as many Englishmen do. Sport apart, he tends to live less a social life than a passive, private existence beside a wireless set, over a "thriller," or in front of a movie screen. Where he belongs to groups and organizations, whether they are trade unions, professional associations, or friendly societies, he is frequently only too ready to leave their policy-making and administration to the little bureaucracies and governing cliques which develop within them. The latter usually would welcome well-attended meetings and rank-and-file interest,

but experience has resigned them to oligarchy tempered by spasmodic popular control. As Carl Sandburg says:

> "The people so often sleepy, weary, enigmatic,
> Is a vast huddle with many units saying:
> 'I earn my living
> I make enough to get by
> And it takes all my time.
> If I had more time
> I could do more for myself
> And maybe for others.
> I could read and study
> And talk things over
> And find out about things.
> It takes time.
> I wish I had the time'."

There is no over-riding pessimism in these suggestions. If the stress is being placed here on the worst sides of Australian affairs it is because that is where danger to parliamentary democracy lurks. There are elements of strength, however, in even the weaknesses just noticed. So long as the people can be fully and intelligently roused in political emergencies, their pre-occupations with other interests in normal times help to ensure in them a measure of balance and stability in dealing with crises and major problems. It may even mean that they will bring a necessary measure of moral strength and detached judgment to bear at those times which a more constant pre-occupation with politics might have dissipated or debauched.

Each generation brings forth its jeremiads. It seems to be a divine right of each, looking back to the past, to see decline in the present, not least in this matter of the popular exercise of sovereignty. Deakin's lament in 1892 is the very same as is made to-day, and in some degree it is always the same:

> "In Victoria, the liberalism of the old days, of the old colonists, is a spent force; we play with its name and glorify its shadow; it is dead, it has passed. The new generation care less for politics and are less trained to cope with their difficulties. We are abandoned to cliques, coteries, the reign of accident or of domineering ability, principles are really extinct, and we are governed by cries and catch words."[5]

Years after Deakin's death, the lament was still chanted:

> "Liberty means self-reliance, it means resolution, it means enterprise, it means the capacity for doing without. It is a thing to fight for and to endure. [The average man] is still incapable of bearing the pangs of liberty They make him uncomfortable, they alarm him; they fill him with great loneliness. There is no high adventurousness in him, but only fear. He not only does not long for liberty, he is quite unable to stand it. What he longs for is something wholly different, to wit security. He needs protection. He is afraid of getting hurt .... Poli-

tics becomes the trade of playing upon the democracy's natural poltroonery—of scaring it half to death and then proposing to save it....''[6]

There is always some truth in these complaints; rarely a balanced picture. There is no case for resignation or useless wailing. The need is for analysis and reform—more than reform, for education and stimulation.

III

"The people must be educated," wrote John Curtin in the depth of the Second World War, "so that the demand for the new order and the formulation of that order comes from within themselves and is not imposed on them by a benevolent government."[7] Yet there has been little social aim or purpose in much Australian education. Individual teachers possess admirable aims; but, in practice, how much social sense is acquired by the average Australian child before he or she leaves school? It is next to impossible for them to do so under present circumstances by the age of fourteen or fifteen, when they are only becoming fitted to pass from the stage of basic instruction to that of education. Education is a broadening and disciplining of the mind; it is the arming of the mind with strength to distinguish essentials from unessentials, it is the acquisition of intellectual power to distinguish opinions and prejudices from objective facts, personal desires from social needs. It does not depend on attendance at the "right" school or the "best" university college. But it requires more schooling and better schooling than most Australians have enjoyed in the past. And it requires in particular a wide extension of adult educational services.

As one critic has summed up the situation in Australian education, "the underlying philosophy of our society is virtually a denial that aims are necessary. Our thinking is so little assimilated to any general purpose that we go in perpetual dread of indoctrination; we prefer neutrality."[8] "Neutrality" is in fact rigidly enforced as a standard in many spheres. Some schools have expressly forbidden their teachers to speak in class or from public platforms upon any subject or in such a way as to hurt the susceptibilities of parents. Conservative parents have objected to their children being taught elementary critical analysis of newspaper material—an essential function of a democratic citizen—on the grounds that it fostered radical beliefs. They have acquiesced in the gradual elimination of history and other social subjects from many high school curricula. And it is significant that, in almost every Australian university, statutes expressly forbid party membership or political activity to some or all members of the teaching staff. This is directly contrary to the English practice. Successful attempts have even been

made at times by the authorities of some Australian universities to strike down students' political clubs.

Nor is this drive for "neutrality" confined to the educational services proper. A depressing timidity apparently delimits the freedom allowed to speakers over the national broadcasting network. The civil servant knows that sanctions may be overtly or covertly applied if he too publicly declares opinions which may be dubbed heretical or extreme. The same is increasingly true of the employees—notably non-manual workers—in Australia's big companies and monopolies. Some of these organizations rival the Gestapo or N.K.V.D. in their interest in individual personnel opinion. Not a few lawyers, doctors and other professional men have found the means to a reasonable livelihood fall away upon their taking open interest in unpopular policies and ideas.

These are some of the pressures to which a growing proportion of the Australian nation is subjected as it passes through the schools and out into the life and work of the community. There are few jobs other than in manual trades and unskilled labouring work where the pressure to "conformity" and "neutrality" is not apparent. This is one of the most dangerous threats—if not *the* most dangerous threat—to the future of Australia's parliamentary democracy. Skilled and unskilled workers are sometimes victimized for their opinions, too, but the great union organizations afford them some degree of protection. For the rest, the best-educated elements of the nation are being increasingly eliminated from free and active political life—they are being politically sterilized, and the instrument is economic pressure.

Australian democracy itself may be threatened ultimately because so many of those most capable of strengthening its dynamics or giving it direction are effectively excluded from doing so. Such a danger is equally probable under certain types of socialism as under the present hybrid capitalism. This appears to be one of the unsolved problems of modern democratic government—not because it cannot be solved in theory, but because men seem unequal to applying a solution in practice.

It is not surprising, then, that recent poverty in the field of Australian political thinking, dating from the First World War, has continued with little sign of abatement. Press and party leadership have both reflected this poverty strongly. Originality has been absent. Amongst the rank-and-file adult education has fought a losing fight. Imported ideas since 1914 have failed to take fruitfully to Australia and have proved unsuitable for fertilizing the stock-in-hand. The average Australian is unintellectual—many are positively anti-intellectual. Politics do not gain from being highly intellectualized, but without some stimulation they will prove entirely barren. When the party

"machines" in each State frown upon self-expression of a critical sort within their ranks and threaten disciplinary action, something vital is lacking.

Australians as a whole remain easy-going experimentalists. Paradoxically, it is possible to be an experimentalist by temperament, yet to be inflexible in one's allegiance to political parties, particularly where parties are based broadly upon classes. Henry Bournes Higgins, at the end of his distinguished presidency of the Commonwealth Arbitration Court, succinctly diagnosed the basis of this inflexibility:

> "It is my conviction—the result of duties that oblige me to look at both sides—that most of the friction in Australia arises from the fact that there are here just two classes of society, and that the members of each class have neither the knowledge nor the sympathy necessary to enable them to understand how facts present themselves to the other class. One class lives mainly by profit; the other class by wages. Some people, of course, are connected with both classes, but everyone tends to hold the opinion of the class in which his interests and his associations chiefly lie."[9]

Such inflexibility has the obvious disadvantage that much which passes in public life and through the parliamentary processes receives scant examination and informed judgment on its detailed merits. This has the cumulative effect of making the federal system more difficult to work, for a "federal system requires a high degree of political capacity, infinite patience, and a willingness to compromise."

But even more dangerous is the irresponsibility of the politically ignorant, confused and indifferent "floating vote," which is frequently decisive at elections and referenda and proves an inhibiting influence on political leadership at all times. Lying between the two less fluid elements, the floating vote usually surges irresolutely to and fro, in response to irrelevant "issues" or the fleeting excitements of the moment. For over twenty years it has been actually forced to the polls, for voting is compulsory on pain of a £2 penalty. Of these people who cast more or less irresponsible votes the critic of compulsory voting writes:

> "They are a tremendous danger at best, even if they are left the option of remaining inactive. But if you allow them to be canvassed and harried and hunted to the polls, you are loading the dice heavily against a reasonable decision. And if you go to the utmost length and compel them by law to vote, you are deliberately reducing the collective intelligence, the collective sincerity and strength of purpose to the lowest possible level."[10]

Sir Frederick Eggleston was probably near the mark when he concluded that "compulsory voting assists a Government which is moving with a live popularity: it punishes severely a

Government which is unpopular." That is about all we can safely say on the subject.

Yet the floating vote is not without its uses. Its existence, whatever its shortcomings, does keep the politicians "uncertain of power and therefore responsive to the current of opinion." When this vote falls decisively to one party it at least has the virtue of giving it a clear working majority, which is usually very much to be desired in parliamentary government. It is true of course, that under a voluntary voting system the "floating vote" was just as valuable as under compulsory voting to-day, for "the greatest value of a vote is not that it should be used but that it can be used."

At the same time it must be recognized that the politician deliberately and not very honestly angles for this floating, often insincere and generally ignorant vote. His chief concern at most times is a supply of slogans, phrases and "flashy" schemes which will capture for a moment the superficial fancy of the unpolitical section of the electorate. Even in a general election the main "issues" are painstakingly chosen to that end.[11] As one able American party manager put it:

> "The choice of issues is decided upon only after the most careful and searching enquiry into the state of public opinion, into the question of whether an issue has national or just local appeal, and above all others, into the question of guessing just where the foe should prove most vulnerable. It is easy to realize how a line of attack might fail to impress the public, or worse still, might rub public feeling the wrong way and in the end turn out to be a boomerang."[12]

The skill of a party at election-time is largely reckoned in terms of its ability to establish issues of its own choosing as *the* issues of the election. Insofar as the appeal of the politician is directed to the floating vote it is too often an appeal to its negative qualities of selfishness, complacency, fear, vanity or inertia. Not only are the issues, manufactured for the occasion, often intrinsically unimportant; they are not infrequently fundamentally harmful to the best interests of the nation. It is unfortunately easier to debauch public opinion and morale than to educate and steel it to meet the realities confronting it. And the politician too often loses his integrity in the former process.

Since so many of the issues manufactured at election time are so patently for "window-dressing," it is fair to say that in Australia few convincing, specific mandates are given at elections on the basis of policy points. In effect what is given is a general mandate to a party and its leader to carry on the affairs of the country according to the general approach with which their followers (and their opponents) associate the victorious party. In Australia the triennial Conference of the Labour Party decides whether any revision of its general programme is

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required That programme amounts almost to a "credo" or philosophy of social life—for which Labour men are pledged to struggle and upon which the party professes to stand or fall. (The party in practice reserves to itself the right to regulate the pace at which the programme will be implemented.) The anti-Labour parties have followed suit in publishing a programme from time to time; but, because one is forever changing its name and because both are intent on managing the status quo rather than pushing forward, theirs have never come to possess the significance of the Labour programme. The important point is that these programmes are published. It is the spirit of these full-dress programmes, together with a general estimate of the quality of personnel and the circumstances of the times, rather than a few "issues," which are the basis of more deliberate judgment through the ballot-box.

The co-existence of Commonwealth and State Parliaments is very confusing to considerable sections of the Australian electorate. The confusion is very largely due to the state of ignorance of elementary national affairs in which most Australians leave school and from which relatively few make a substantial recovery. In part the confusion is due to the inherently complicated nature of a federal system.

> "An obvious criticism of federalism is that the task of following the proceedings of two governments calls for more political vigilance and discrimination than the public can be expected to show, that the result will be confusion to the public mind, or that public opinion will concentrate upon the doings of one government and disinterest itself in the other."[13]

Nor is it simply two governments and Parliaments which require watching. The great argument of the "States' Rights" party in the 'Nineties was the desirability of trying out social and economic experiments in a single State before applying them generally. Federation, based on this premise, requires citizens to watch, not two, but seven Parliaments if they are to get the best out of the system. So scanty and spasmodic is press coverage of interstate politics that such vigilance would be possible only from enthusiasts who subscribed to the "Hansards" of the Commonwealth and five States and found some way of following the business of the Tasmanian Parliament which has published no "Hansard." Hansard of itself is insufficient, so purchase of interstate parliamentary papers and newspapers would also be necessary. But even to follow the affairs of the Commonwealth and one's own State requires more time, energy and inclination than the overwhelming majority of Australians ever nowadays devote to politics.

Hence the confusion of the electorate. Two sets of elections are sufficiently baffling. (On occasion State and Federal polls used even to occur on the same day, though this is now ruled out

by law.[14]) But a further major difficulty lies in the public's lack of any clear and universally recognized test of the respective Parliaments' responsibilities:

> "Under the system of dual authority operating at present, political parties are enabled to make promises the non-performance of which can be excused on the ground of constitutional limitations. If the Commonwealth Parliament had complete power, these unfair vote-catching tactics would not be possible. The parties and the people would know that whatever the majority of electors voted for would come within the legislative competency of Parliament. Those making the promises would do so with a sense of responsibility that is precluded by the existing division of powers."[15]

Even some Conservative opinion now acknowledges the force of that argument:

> "Any other matter which involves an appeal to class interest is more likely to be healthily debated, and decisions to be healthily arrived at, if the conscience of the whole of Australia is devoted to its solution, and it does not become the subject matter of party strife in each provincial body."[16]

But as the constitutional framework stands, these confusions, deceptions, and weaknesses remain.

IV

If the Australian press genuinely desires the electors to take a fully and fairly informed interest in national affairs, there is a minimum of service it must give. The press must be intellectually honest throughout its columns. Outside its editorial columns it must clearly distinguish opinions from facts and present the latter as fully and impartially as a good staff can marshal them. It must eschew the gentle arts of omission and selection according to proprietorial political bias. It must give a reasonably full analysis of the social situations involved in public events. It must give a wide and intelligent interstate as well as national and international coverage.

> "Society conferred a special 'right' upon the press in the belief that the press would pay society back by finding and publicising the sort of truth which makes men free. The truth which makes men free is for the most part the truth which man prefers not to hear.... The press has helped the public to neglect its duties because the press has usually refrained from carrying on the steady adult education campaign which is the only justification for press freedom."[17]

Australians were long reputed to be inveterate believers in whatever news appeared in the press. Pioneer farmers and squatters and workers and small-townsmen had little alternative: whatever their natural scepticism or powers of personal judgment, they had practically no alternative sources of information upon which to base judgments. Several Australian newspapers in any case have creditable records. For a generation, however,

anything resembling a simple faith of Australians in their press has steadily waned. Partly this is due to the urbanization of the population, partly to the rise of alternative sources of information. Both factors have made patent the partisan performances of most of the big newspapers.

Yet for all their broad scepticism about the editorial integrity of their press, many Australians remain remarkably naive about the worth of particular items of home or overseas news. The revealing analysis of such a book as Macmahon Ball's "Press, Radio and World Affairs" has reached a relatively small public, and, even then, the section of the public in any case best able itself to assess the reliability of press material. Few Australians are familiar with the standing or precise political affiliations of overseas sources. Many, skimming over their newspaper pages, fall victims of calculatedly misleading headlines and bold types.[18] How many readers are in a position in any particular instance to assess the fairness and fulness of political news reporting?

Some small attempt has been made in a few schools to fit children for critical assessment of their press columns, but overall little has been achieved.

The special question of parliamentary reports in the press is a vexed one. Press men argue that the public is not interested in long reports such as the "Times" and the "Manchester Guardian" give daily—even under wartime newsprint restrictions—in Britain. The frank Australian press executive maintains that a newspaper, now normally a highly-capitalized commercial enterprise first and foremost, must give the public what they want, which is *not* full parliamentary reports. Of a majority of readers this is true. But in this matter above all there would appear to be an inescapable obligation to serve fully and impartially that element of the population which takes seriously its citizen duties. There are, of course, alternative ways of serving these people in this particular matter[19] but none is a substitute for full and fair daily reporting of debates.

There are other serious problems in the relations of the press to Australian parliamentary democracy. One of these which grows yearly concerns the presentation of government policy. By adopting many of the techniques of modern commercial advertising, political leaders have found new ways of approaching the press and radio. Through their secretaries, and publicity and public relations officers, they pour out press statements. In an age when governmental activity touches so many aspects of economic and social life many of these statements are of major importance and constitute real news; others are not. In actively seeking for themselves the greatest possible publicity, Ministers and Opposition leaders employ men whose main task is to "sell" them, to "put them over" to the public, to get them into the

public eye and keep them there. Perhaps this is a natural development stemming from the modern ascendancy of Cabinet in the Australian political system. It is natural that the Government should defend itself with the same weapons which are being used against it, whatever its political colour.

Formerly the public learnt the mind and policy of its Government and representatives largely through parliamentary debates and public meetings: in either case speakers were—and knew they were—subject to immediate heckling, questioning and counter-speeches. They knew that most of the press would report, reasonably fairly and fully, the arguments and debates of both sides. The new trend is for Ministers to issue statements, drafted by experts in publicity or advertising, appearing often (if the press is sympathetic) without accompanying criticism or counter-statements. Facts can, for a time at least, be readily concealed. And the press and commercial radio can arbitrarily determine in the light of its political affiliations and bias how much publicity and space, if any, it will give to its opponents, and in what form it will reproduce their statements. Since the whole Australian metropolitan daily press now belongs to one only of the two broad economic classes and—occasional personal vendettas apart—almost entirely favours one only of the two political camps, all this is of first rate significance.

(The unbalance is almost as bad in the radio field. Labour has acquired the whole or part of three or four "B" Class (Commercial) stations, and interests sympathetic to the Country Party have some control of a small number. The bulk of the remaining commercial stations (some ninety in number) is directly or indirectly controlled by interests allied with the Liberal Party.)

Newspapers can, of course, go further than partisan attack and so neglect to publish the facts or the parliamentary proceedings and so misrepresent the practice of parliamentary government and sneer at the politician, as to undermine the whole system. Thus an anti-Labour Prime Minister during the Second World War saw fit to rebuke publicly a Tasmanian newspaper in his own political camp for its reflections on the parliamentary system, including the alleged faking or mis-captioning of a photograph of the chamber of the House of Representatives in debate.

The danger is that the great bulk of the population will not have the information, the intellectual resources and stamina to resist the pressure upon their minds and their attitudes from repeated press insinuations and attacks of this sort.[20] There are a hundred and one ways in which sections of the Australian daily press smear parliamentarians generally and those opposing their own economic philosophy in particular. And the power of men who enjoy control of these weapons can be enormous.

One newspaper proprietor, at least, aspired to the role of Warwick. David Syme of the Melbourne "Age," liberal and Protectionist, was a real maker and unmaker of Victorian and even Commonwealth Cabinets and Ministers at the turn of the century. *He sponsored Alfred Deakin's early career. In 1903* his influence with Charles Cameron Kingston caused that able gentleman's retirement from office. Syme had prevailed on Kingston, then Minister for Trade and Customs, to show him the Conciliation and Arbitration Bill, which he proceeded to publish in full, together with trade union comment, before it was introduced in the House. Not long afterwards George Reid, a free trader, achieved the Prime Ministership of a minority Government. He was at Syme's mercy. As the great protectionist's biographer tells the story:

> "Anxious to remain in office, Mr. Reid decided to make terms with 'The Age.' He, therefore, made a proposal in writing to Syme for the appointment of a Royal Commission of five citizens who should not be members of Parliament but competent businessmen and whose duty it should be to enquire into the working of the Tariff and its effects on Australian industries. Mr. Reid verbally pledged himself to allow Syme to nominate a protectionist chairman and other members of the proposed Commission, and to veto a certain number of names suggested by Mr. Reid or his colleagues."[21]

And so powerful was Syme that, when Reid broke faith, a short campaign was sufficient to turn out his ministry. As late as 1914 the "Age" men were still apparently writing the protectionist sections of party leaders' speeches.[22]

There have been other press owners since Syme who have given rein to their political ambitions. Perhaps tired of merely making money and influencing public opinion, they have sought power more directly, or at least the manipulation of the strings of power.

All this is no denial of the contention that, as a Chicago editor of Civil War days put it, "the function of a newspaper is to print the news and raise hell." In the field of political and social democracy "the right to speak one's mind is a means for detecting the sore spots in our system: it gives direction to the processes of adjustment." Or, as another authority has it, "freedom of criticism is necessary for maintaining the efficiency of a democracy." And again, "the real value of freedom of speech is not to the minority that wants to talk, but to the majority that does not want to listen." But it is to be noticed that our Chicago editor's first emphasis is on the printing of the news. The rate of profit from newspaper production and the degree of direct political power from newspaper control should be essentially secondary considerations.

In practical terms the need of Australian democracy appears to be either real impartiality in the limited number of existing

newspapers, or an increased number of newspapers whose ownership and operation is so distributed as to allow adequate and separate presentation of major political viewpoints.

This is an age of big, heavily-capitalized production units. The Australian metropolitan daily newspaper industry (which in fact serves a large proportion of each State) is no exception. Four or five controlling groups now dominate practically the whole industry. Far from its being "the tool of Big Business," the daily press is part of Big Business in its own right, its control enmeshed with other sections of that general entity. The heads of the Australian press groups need no pressure or guidance from big advertisers—their philosophies and general interests are substantially identical. This being the case, and if the present number of newspapers is not to be increased, is it too much to hope that by some modification of their present control they should be vested in semi-public trusts like those now directing the "Times" and the "Manchester Guardian"? Meanwhile from outside the newspaper industry the competition of a vigorous and extensive independent radio coverage of news, and direct relaying of actual parliamentary proceedings at Canberra by the Australian Broadcasting Commission, have real potentialities for good in their effect on the existing Australian press.

The Metropolitan Daily Press, 1946.

Population of Capital and State.	No. of Morning Papers.	No. of Evening Papers.
Sydney (1·5 m.), N.S.W. (2·9 m.)	2	2
Melbourne (1·2 m.), Victoria (2 m.)	3	1*
Adelaide (0·37 m.), South Australia (0·7 m.)	1	1*
Brisbane (0·36 m.), Queensland (1·1 m.)	1	1
Perth (0·24 m.), Western Australia (0·5 m.)	1	1*
Hobart (0·07 m.), Tasmania (0·25 m.)	1	0

* Under same control as the morning paper, or one of the morning papers.

Most of these newspapers publish a Sunday or weekly newspaper or news-magazine; several are linked with commercial radio stations.

To hope, as an alternative, for developments offering, even in Melbourne and Sydney, the choice of newspapers which is available to the Parisian or the Londoner would be quite unrealistic, though some increase should be economically possible. Science is lending and may further lend its aid to those who favour the solution of more news media. Within the newspaper industry overseas, processes have already been invented which permit of a newspaper being set up and published in one city and at the same time being reproduced cheaply by a telephoto or similar principle (with a supplement of local news

added) in several other cities and towns. This reduction in capitalization requirements at least increases the possibility of competition from new newspapers under the control of groups with rival political and economic philosophies (though it could equally foster a still higher concentration of control by existing metropolitan newspapers stretching out into a network of distant, even interstate, cities and towns).

Freedom of the press is but one of several important civil liberties. Amongst these must be numbered "habeas corpus," "trial by jury," initial presumption of innocence of a defendant, protection from libellous and slanderous attacks by fellow citizens, freedom of assembly, speech and worship, freedom of association and full civil liberties for law-abiding minorities.

At the same time it is always understood that there must be a final limitation of liberties: they must be enjoyed within the framework of the Constitution. If a person or group is subversive of the Constitution and the democratic way of life, it cannot expect to enjoy freedom of action. Freedom of speech for an individual is one thing: freedom for an organization to promote subversive activity a very different thing. But some liberties—habeas corpus and the presumption of innocence of a defendant until proved guilty—must normally be extended even to those charged with seditious or violent revolutionary behaviour.

While these are civil liberties which must be conceded by the government, it is also the duty of the government to see that some groups and individuals do not encroach on the liberties of others. Economic and social repression of minorities, of the weak or the harmlessly eccentric, can be as cruelly perpetrated by their fellow citizens as by any government, and often much more effectively. The persecution of many sincere conscientious objectors by fellow citizens during the First World War is a distressing example. Thus the State must both exercise restraint and restrain others.

> "When men have realized that time has upset many fighting faiths, they may come to believe, even more than they believe the very foundations of their own conduct, that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law than an immediate check is required to save the country."[28]

Australia has not an unblemished record in the field of civil liberties. Though Australians are in many respects easy-going, they are apt to be intolerant of the odd-man-out, the social non-conformist. Perhaps that is due to a survival of the rugged pioneering tradition; perhaps to the sectarian and stridently extreme political elements on the fringes of the Australian community which promote anything but a liberal tolerance of opposition or non-conformity. Perhaps it is due to the indifferent standard of education (in the sense already discussed) in most sections of the Australian community—for ignorance and its corollaries, fear and jealousy, are the ultimate bases of intolerance. There are Australians—some of whom have even become elected representatives and leaders of the people—who find it easier and more satisfactory to silence critics than to answer them. They fall short of the liberal faith: they reveal ignorance of the whole significance of British constitutional and political history.

The Australian Parliament has very occasionally imposed legislation blatantly opposed to the British tradition of civil liberties. Most notorious, but not quite alone of its kind, is the Crimes Act, as amended in 1926 and 1932. Its clauses provide for the suppression of minorities (the Government could declare illegal any group promoting "feelings of ill-will and hostility between different classes of His Majesty's subjects so as to endanger the peace, order or good government of the Commonwealth"—Sec. 24A), the dispensing with jury trials, the enforcement of evidence, the deportation of certain offenders under the Act and the deprivation of the civil rights of certain others, the prima facie acceptance of charges tending to place on the accused the onus of proving innocence, the dispensing with the necessity of confronting the accused with his accusers, and the waiving of certain trade union rights. Admittedly little resorted to, this Act nevertheless recalls the acute American comment that "it is not the soapbox orators, but a horde of official spies, and midnight house-breakers, who bring our government into hatred and contempt."

In 1938 the Government coerced the waterside workers to load shipments of scrap iron for Japan on threat of applying to strikers the licensing clause of the Transport Workers Act, which in spirit and origins resembled the Crimes Act. A former Governor-General and Chief Justice, Sir Isaac Isaacs, was moved to protest on the ground that "the Government's compulsion on the men offended against the constitutional right of Individual Conscience. . . ."[24]

In 1940, when an appeal against a conviction under the National Security Act (a Commonwealth measure) was to be heard, the police of New South Wales allegedly filled all seats in Court before the Court was opened to the public and so

effectively but illegally ensured that the case should be heard in camera.[25] This is most exceptional but correspondingly significant when it occurs.

When W. M. Hughes used the war-time censorship for political purposes against his opponents in the Conscription campaigns of 1916 and 1917 some speeches of the Premier of Queensland, T. J. Ryan, were not allowed to appear in the press. Ryan read the speeches over again in the State Parliament of Queensland and they were automatically included in Hansard. The Commonwealth Prime Minister (Hughes) then directed that the Queensland Hansard issue be seized at the printers. Some copies were missed but most of them were seized and destroyed.

Freedom of speech, regarded as "the right to unrestricted discussion of public affairs up to the point where there is immediate danger to the public," and associated civil liberties, have, however, been remarkably consistently respected by successive Commonwealth Governments.

V

Pressure groups—groups of people "pushing" an interest or cause of particular moment to themselves—are always associated with politics. The growing complexity of Australian social and economic life has simply meant more pressure groups, more powerful pressure groups, and more effective methods of applying and maintaining pressure. These groups differ from parties in that they do not directly aspire to govern: they normally seek to prevail on the existing party government only in respect of some particular policy or to help place in power a more sympathetic party. Their objectives are usually narrow: they do not range over the whole field of political, social and economic life as must those of a national party. For that reason pressure groups are usually more single-minded—more like the proverbial "Economic Man" in their behaviour—than either individuals or parties. They act "with less sense of moral and communal responsibility than would their component members as individual citizens."[26] A United States Vice-President, Henry Wallace, has written: "The alarming thing is not that there are so many special pressure groups but that there are so few people who are concerned solely with looking at the picture from the broad national angle.... It is, therefore, up to the executive branch of the government to consider the national interest."[27] In Australia there is the further complicating factor: the great parties of the Commonwealth, and the executive government itself, are based primarily upon economic classes and as such themselves tend to consider the national interest from the point of view of particular classes and groups.

In practice, nevertheless, the system of responsible Cabinet government and the solid class basis of Australian parties probably serve here to keep in check the worst excesses of the system of organized pressure groups which has become so intensive and extensive in Washington. Australian political development has to some extent tended to drive the representatives and spokesmen of economic pressure groups from the lobbies into the chambers of Parliament, as sitting members of the three parties. Even so, there are never wanting lobbyists who scurry about the King's Hall or the Hotel Canberra, listening, talking, counselling, urging, begging.

Yet some of them have their social and political value. For the Government and Parliament have to interest themselves in many fields and in almost every national aspect of the people's lives and activities. They obviously must get outside views, notably those of the sections of the electorate most closely touched by particular policies and laws. Governments may even be relieved at times to know that there are organizations which make it their business to have facts and views marshalled and readily accessible—always provided that these organizations are fully and freely representative of those they claim to champion. In that they have interested opinion organized and articulate, their existence helps to make possible consultation without detriment to the speed essential in modern administration. For these reasons they have become very serious rivals of individual Members of Parliament for influence on the Government and legislation of the day.

Through friends in Parliament, by conversation in the lobbies, by systematic "intelligence" work (sometimes as determined and unscrupulous as military intelligence work) the pressure groups arm themselves with "inside" knowledge and urge their views. They do not restrict their efforts to election time: those efforts are continuous. Their lobbying would be even more intense if the Australian Parliament held regular open committee hearings on Bills in passage as is done in Washington.

Australia is rather more given to extra-parliamentary commissions and boards than to parliamentary committees—whether consciously or not Australian Governments would appear to be strong believers that "the proper use of advisory bodies is the right answer of representative democracy to the challenge of the corporative state." It is always a pressure group's hope to work a representative on to appropriate commissions and boards. If possible it must use its influence to get a sympathetic majority on such bodies. Its success will depend on the colour of the government of the day.

Politicians do not enjoy being pestered by lobbyists. As long ago as the Deakin-Lyne Tariff of November 1907, when the top of Bourke Street, Melbourne, swarmed with touts and lobbyists

of the manufacturers, the Speaker informed the House that he had had to take steps to check "the lobbying which is taking place, not only in the Queen's Hall, but in the immediate precincts of the Chamber, lobbying which seemed to me most objectionable and to which the Members of any party in the House ought not to be subjected by strangers."[29]

In some ways the work of the lobbyist of the Commonwealth Parliament, with its mere 75 Representatives and 36 Senators, is easier than that of his counterpart amongst 500 Washington legislators or 600 Westminster Commoners. By comparison with American politics, on the other hand, the rigid discipline usual in parties based on economic classes complicates the Australian lobbyist's task. While a measure is being drafted, or even when it is before Caucus, he may have some success, but, because it is exceptionally hard in this country to persuade a Member to cross the floor on any measure, pressure groups do not find it worthwhile to pursue the politicians to the bitter end of the legislative process.

Not all pressure groups are representative of economic interests. It is possible to distinguish at least three types. One has entirely altruistic, public-spirited motives. Of this type there are examples as different as the Council for Civil Liberties, the Women's Christian Temperance Union, and the Society for the Prevention of Cruelty to Animals. These voluntary associations quite selflessly urge and publicize "causes" which they conscientiously believe to be in the public interest. In and out of season they work: they exact pledges from candidates, promises from Members, interviews from Ministers. They give time, money and energy for their cause, without any possibility of financial return. The individual lobbyists are usually purely disinterested and all that their adherents, if they are successful, can hope to achieve is the sweet taste of success and ease of spirit at the achievement of good.

There is a second type of pressure group—the several Churches or the Returned Soldiers' League, for instance—which may be altruistic in ultimate aim, but whose immediate efforts are often directed to some economic or social institutional advantage. This, it seems, distinguishes it from the first type. The Churches seek financial aid or concessions for their schools—an immediate economic end—, or the enforcement by law of social teaching not shared by other sections of the community—which have to do with what they regard as their ultimate purposes. The Returned Soldiers' League seeks preference rights or pension increases for its members as well as the non-economic ends of comradely association.

Such institutions give considerable service in a democratic community and become dangerous to democracy only at a point where they threaten to become "over-mighty subjects," forcing

their domestic ideas or claims on the country as a whole. The following declaration shows how elements in a pressure group may on occasion apparently aspire to wield the State power itself:

> "No man can do much to win this war, unless, perhaps, the public takes a leaf out of the books of those who have been to date the most successful in waging war, and hands over control of the nation's resources and direction of the war to a well-chosen dictator for the duration. So long as the present government commands public support returned men in the national interest will pledge themselves to give wholehearted support. At the same time, they have a claim because of the proved soundness of their judgment and because of their experience to be permitted to keep an eye open for the opportunity of substituting a fighting leader when the occasion permits."[80]

This followed a suggestion by a few individual Returned Soldiers' League officials in 1940 that Mr. Menzies should assume dictatorial powers and that he would receive Returned Soldiers' League backing—a suggestion which met with widespread protests and was speedily repudiated at the time by the League itself.

Finally, there are the frankly economic pressure groups—of the sugar interests and the oil companies; of the iron and steel combine and its subsidiaries; of the Anglo-Australian chemicals group and the coal-owners; of the brewers and the trading banks. Resident in Canberra and Melbourne are, amongst others, the accredited, full-time lobbyists of the Chambers of Manufactures, the Chambers of Commerce, the Employers' Councils, the Chamber of Automotive Industries and the Council of Fire and Accident Underwriters. The pastoralists' and wheat-growers' associations periodically send their representatives to Canberra. So do the Australasian Council of Trade Unions, the Australian Workers' Union and the "militant" unions. Labour was a pressure group before it was a party. The Second Intercolonial Conference of Trade Unions in 1889 was very definite about the need for lobbyists in all colonies. In fact they had lobbyists considerably before that date, and to-day on the industrial side Labour remains a pressure group. Even the State Governments have in many matters become virtual pressure groups at Canberra on behalf of local industries and other interests.

Resident lobbyists entertain politicians and senior public servants. They push the views of the interests they represent. Some of them seem to haunt particular departments and the hotels of parliamentarians at crucial moments. The existence of bodies like the Arbitration Court and the Tariff Board has deflected little of the pressure from Cabinet and Parliament. Governments come and go but the lobbyists continue to flutter around power, wherever it lies. Against this pressure the

average citizens, particularly in his capacity as consumer, is helpless if the Government itself fails to preserve his interests and fight his battles.

> "It is precisely the outcome of intergroup conflicts which the democratic politicians shield us from. If they sometimes lie in the strenuous task it is regrettable but understandable. If they sometimes truckle, that is despicable but tolerable. If they are sometimes bribed, that is more execrable, but still not fatal. The vices of our politicians we must compare, not with the virtues of the secluded individual, but with the vices of the dictators. In this context almost beautiful things may be said of our politicians—by way of compensation if not by way of extenuation of whatever vices attend upon the arduous process of saving us from violence and murder. People elsewhere get killed in the conflicts of interest over which our politicians preside with vices short of crimes and with virtues not wholly unakin to magnanimity."[31]

VI

Some candidates stand for Parliament because a great cause burns within them, a few because they feel there is money to be made through (though hardly in) politics. Most men stand because they are ambitious. But that is not in itself discreditable to them.

> "....The worst that can be said about. ..[candidates] ....is that they are ordinary people with a fair slice of ambition; and—the question has been asked before—is ambition a sin? In truth, what the democratic system does is to harness a man's ambitions, if they lie in the right direction, to the national dog-cart. The horse will go of his own volition because he wants to get somewhere, and perforce the cart will follow. By choosing the right horses the nation will arrive at its chosen destination, but the nation chooses the horse, and—it is here that a dictatorship differs—the horse can always be changed, in midstream if necessary....Political ambition in a democratic state lies high in the scale of virtues because it cannot be achieved save by devotion to the common good."[32]

Ambition must, of course, be disciplined to the extent of our insisting that it realize itself by constitutional and legal methods. Thus conviction for bribery, attempted bribery or undue influence results in ineligibility for election or admittance as a Member for two years. There is no legal sanction against similar practice at the stage of pre-selection by one's party, though such malpractice has led to expulsion or suspension from the party for considerable periods. It is important that sanctions be applied rigorously against pre-selection offences by all parties since at least a third of the House of Representative seats are "safe" seats—that is to say, pre-selection is virtually as good as election.

A politician is something of a social claims adjuster. Groups and individuals are clamouring for all manner of rights and concessions from the Commonwealth. The politician has to

reconcile as many of these claims as possible—at very least enough to secure his election and assure his re-election. He will tend to survey all significant claims carefully and shape his election appeals accordingly. If an electorate is politically immature or intellectually flabby the candidate may get away with promises to reconcile all sorts of inherently irreconcilable claims—Hitler did that in his early days, so have some Australian politicians. But if an electorate is politically acute and alert, a candidate must be more forceful, definite, resourceful and hard-working, capable of dealing effectively with leading issues. If he is to make his mark in politics "he must have a yearning for power, something of the actor's love of an audience, the capacity to create an immediately recognizable personality, infinite patience, the ability to be ahead of other men, yet never so far ahead that we cannot recognize where he is going without undue discomfort."[33] It is not every politician who is a leader, it is not every leading politician who has all these qualities.

The accompanying Table presents a very approximate picture only of the changing make-up of the Commonwealth Parliament. It is at best useful, without claiming extraordinary exactitude. Taking the columns from left to right a few explanations must be made. The classification "politician" refers to a man who apparently "lived on the game" and who apparently did not at his time of entering Parliament belong definitely to one or other of the other specific classifications. This is not, therefore, a particularly significant column. In any Parliament there are many more Members who are immediately dependent on their Parliamentary salaries, but their backgrounds lie distinctly in one of the other classifications. The classification "lawyer" is satisfactory except insofar as some lawyers have considerable interests in commerce, industry and finance and see life at least as much through the eyes of those in commercial, industrial and financial circles as through those of men whose interests are simply in the law. The classification "Other Land" refers to small farmers, fruit growers, etc., as distinct from the big pastoralists. It was found impossible to separate the component parts of the classification "Commerce, Industry and Finance," though the interests of all elements within it would not coincide—this is especially true of the commercial elements on the one hand and manufacturing elements on the other prior to protection becoming the settled policy of the Commonwealth, and even afterwards. The number in the "Trade Union Officials" column may be on the conservative side—others in the "Workers and small Shop-keepers" column may have been holding trade union offices. The "Ex-Military" classification refers to regular soldiers with considerable length of service only—since 1918 there have been many members of each Parliament with non-professional war experience. From the first to the sixteenth Commonwealth Parliaments inclusive, the average tenure of Senate and House seats alike was between eight and nine years. After the election of the seventeenth Parliament (1943) there was one survivor (W. M. Hughes) of the first still maintaining membership.

ANALYSIS OF (BOTH HOUSES') MEMBERSHIP IN FEDERAL PARLIAMENT IN TERMS OF BACKGROUNDS AND INTERESTS OF MEMBERS.

	Pastoralists.	Other Land.	Commerce, Industry and Finance.	Trade Union Officials.	Workers and small Shopkeepers.	Ex-Military.	Politicians.	Lawyers.	Journalists.	Other Professions.
1891 Convention	15	2	11	—	—	—	5	19	2	3
1897–8 Convention	14	—	12	1	—	—	3	25	8	3
1901 Parliament	15	9	24	10	9	1	2	30	10	9*
1903 Parliament	14	10	25	9	15	—	6	25	10	7*
1906 Parliament	14	12	25	7	20	—	4	25	7	5
1910 Parliament	14	11	17	8	30	—	4	20	12	3
1913 Parliament	13	15	11	8	32	—	6	16	11	3
1914 Parliament	12	17	12	9	29	—	6	17	5	3
1917 Parliament	13	15	23	7	26	—	7	12	10	5
1919 Parliament	10	22	21	8	29	1	6	14	8	8
1922 Parliament	7	24	20	9	25	1	7	13	5	10
1925 Parliament	11	22	17	7	20	1	12	16	8	9
1928 Parliament	10	21	16	5	24	1	13	15	9	7
1929 Parliament	10	19	12	10	26	1	14	16	11	6
1931 Parliament	15	24	24	5	20	2	11	9	6	5
1934 Parliament	19	21	25	11	11	2	10	11	5	7
1937 Parliament	14	28	17	14	20	1	6	13	4	7
1940 Parliament	12	24	16	11	25	1	5	16	3	5
1943 Parliament	10	17	12	17	27	1	6	11	4	8

* Includes one clergyman—the only one to 1946—J. B. Ronald (South Melbourne).

There have always been some objections raised to pre-selection of candidates by parties. This practice—so run the objections—deprives the electors of a free choice to select their member from all those willing to stand. It means that a selected candidate is thereafter under threat of his party's big stick. A Member possibly fears a dissolution not only because he may lose his seat at the hands of the people, but because his somewhat forthright expression of his views may cost him re-selection to stand as the party's candidate for his seat. He will tend, in those circumstances, to be the pliant tool of the party machine.

There is, however, much more to be said *for* pre-selection—provided it is honest and democratic. It does help to prevent the fragmentation of parliamentary representation. By buttressing a two party system (which there is in Australian federal politics, despite the formal independence of the Country Party as a third party) pre-selection ensures that electors may directly choose their government and may intelligently allot praise and blame as between major national parties. From the Party's viewpoint it allows of concentration of campaign effort. In any case, multiple endorsement—the alternative to pre-selection—still admits of machine sanctions in the form of a refusal to endorse.

It is possible that, as some contend, candidates of forty years ago were nearer to the people because they were less wrapped up in their professional group, their business directorates or their trade union hierarchies. That may or may not be so. There is now alleged to be a tendency for candidates, once they reach Parliament, to be weaned away from the people generally (even if their relations with particular groups remain intimate).

> "*Mr. Duffy*: 'Do you think that the Member of Parliament is responsive to the pulse of his electorate?'
> *Sir Arthur Robinson* (formerly Attorney-General of Victoria): 'I have been too long in politics to take that proposition seriously. I have had 25 years of it and I have seen too much of it. It sounds alright, but you get into that atmosphere. A man is elected and is carried in shoulder high by his supporters. He then takes up his quarters in what, after all, are very comfortable surroundings, and the atmosphere which he breathes day and night is the atmosphere of men like himself, and the other atmosphere at Canberra of public servants and a few score traders. He may be propelled from his electorate charged with the feelings of his constituents, but the charge is dissipated long before he has been a week in Canberra. You have to breathe the air daily. We are all responsive to our daily surroundings'."[34]

Just how far, if at all, such a development occurs in successful candidates depends on many factors relating to their temperament, sincerity, conscientiousness, to whether the seat is a "safe" one, and to how frequently Parliament is sitting. The really unfortunate thing about any such tendency in individual successful candidates in the past has been the fact that the great

mass of electors have hardly noticed, or, if they noticed, never seriously worried about the neglect of their Member. That fact would suggest that there was some substance in the complaint that "the average citizen is coming to regard politics, not as something of vital and ennobling interest and concern in life, but as something which is a nuisance to him. Now, that threatens the whole future existence of democratic institutions in this country."[35] To-day, however, for reasons quite unconnected with real political interest as such, constituents are much more interested in their Federal Member—he is the man who can do something for them in their increasingly numerous contacts with Departments, Authorities and Boards. They will now consequently notice any slackening of attention on his part much more promptly and forcibly.

There has, moreover, been a tendency among Members in recent years to spend less and less time in Canberra. As one commentator put it, Parliamentarians' "only feeling about Canberra is a continued desire to get away from it."[36] A few so far give way to that desire as to skimp parliamentary duties. But absence from Canberra does not necessarily mean neglect of constituents. A great deal depends on whether a Member is devoting his whole time to political work or is sustaining professional or business affiliations as well. A great deal depends on how closely constituents are interesting themselves in their Member's movements and activities.

It has been suggested that the great distances in Australia have hindered men from going into politics. It has been suggested that this is particularly true since Canberra became the Federal Capital. Men have not been able or willing to neglect or abandon their business or professional careers or jeopardize their trade union careers by repeated long absences in the capital. A few of these people have proved their sincerity and willingness for public service by entering their State Legislature, which, because of its location, readily permits of continued participation in private affairs.

It is at least noteworthy that there has been a coincidence in time of decline in the legislative importance of the Private Member with an increased call of electors on private members' time. In part this latter trend is due to increased numerical size of electorates and in part it is due to the fact that electors look to Private Members as champions and advocates in their dealings with the growing numbers of governmental agencies. But these trends are not calculated to make a Representative's role more attractive. There is a world of difference between the role of law-maker and that of "step-and-fetch-it."

It seems to have been contemplated by some of the Fathers of our Constitution that members of State Parliaments might simultaneously have been candidates for and Members of the

Commonwealth Parliament, for, though those in posts under the Crown are debarred from sitting as Members, State Ministers and Members were exempted from this disqualification. But a State Member or Minister wishing to offer himself in the Commonwealth sphere was soon compelled by State law to resign his State seat first. There is sound sense in the disallowance of dual membership under the federal system as Australia has known it to date. Some ability may, of course, have been lost to the National Parliament on this account, but that seems unlikely.

One more point concerning candidatures should be noticed. The wealthy candidate (or the candidate backed by wealthy elements of the population) has a distinct advantage over a poorer opponent. Electioneering, especially under a system of compulsory voting, is largely a matter of commercial publicity work. Publicity requires money. Canvassing and polling day call for many paid and voluntary workers, with cars to bring the aged, invalided or indifferent voters to the booths and with literature for last-minute distribution. In this country Labour rarely commands either the funds or the transport which are poured out by the other side. The law provides an upper legal limit to a candidate's campaign expenditure (£500 per Senator, £250 per Representative). Though there is an occasional threat to call for an enquiry, this provision of the electoral laws is in practice difficult to police.[37]

VII

The members of the Conventions were reluctant to lay down hard and fast electoral rules in the Constitution. They felt that to do so was to make for trouble with the individual States, whose electoral laws were not uniform. To have laid down electoral procedure in detail would perhaps have made more difficult the winning of national approval for the draft Constitution. To bind the nation to electoral methods laid down explicitly in the Constitution might have been to jeopardize the smooth evolution of a really satisfactory system. It took twenty-four years of experiment and legislation for our present electoral scheme to evolve fully.

Tentative provisions alone were made by the Convention,[38] to provide for the period until the Commonwealth Parliament made its own statutory arrangements—which it did in the Commonwealth Franchise Act (1902), the Commonwealth Electoral Act (1902) and subsequent legislation. The Constitution provided that, for the time being, the State Governments should arrange electorates for the House of Representatives and the Senate. In South Australia and Tasmania members of the first House of Representatives were elected by one State-wide electorate: elsewhere the State Governments provided for single-

member constituencies, as the Commonwealth authorities subsequently did for all States. Members of the first Senate were elected by State-wide electorates as provided in the Constitution. Queensland did not avail itself of a specific dispensation to divide that State temporarily into three Senate electorates. The qualifications for electors of both Houses were to be those for electors of the popular (lower) House in each State Legislature at the time, until the Commonwealth Parliament otherwise provided. State Parliaments were also to choose time, place, and methods of election of Senators, and were themselves, rather than the State-wide electorates, to fill casual vacancies in the Senate.

The Commonwealth Parliament was determined to lay down its own electoral scheme, and over the years, in a succession of Acts and Amending Acts, has provided a complete, uniform system under Federal control. Commonwealth officers handle all its electoral arrangements. The Governor-General appoints three commissioners from time to time to determine House of Representatives electoral divisions according to rules laid down in the Act[39] and subject to the approval of Parliament. The Senate election conditions were also made uniform at an early date.[40]

Each State elects six Senators for six years each, half retiring every three years. Senate elections are customarily arranged to coincide with the triennial House of Representatives elections,[41] except when, as in 1929, a Ministry meets a premature end early in the life of a Parliament by defeat on the floor of the Lower House. In that case no Senators go to the polls, but all wait for the expiry of their normal terms. Conversely, in the case of a "double dissolution" (see below) all 36 Senators go to the people simultaneously with the Representatives. The same rolls of electors and the same qualifications for candidates apply in Senate elections as in those to the Lower House, but not, of course, the same electorates.

Members of the House of Representatives are elected by single-member constituencies. The number of electorates in each State should be in proportion to population, provided that no original State shall have less than five seats and that the total number for the Commonwealth shall be as nearly as possible double the number of Senate seats. Actually these two provisions, in conjunction with the fact that the Senate numbers 36, give rise to very serious differences in the numerical size of electorates, particularly as between New South Wales and Victoria on the one hand and Tasmania on the other.

Commonwealth franchise qualifications have been democratic from the beginning, in accord with Cockburn's plea to members of the second Convention that "by no means should they mingle the clear crystal cup of their democratic franchise with the muddy pool of plural, proxy or property votes." Women

throughout Australia received the vote in the second year of the Commonwealth, despite the fact that some of the States had not in 1902 granted it to them. Absent or postal voting was provided for: this met the needs of shearers, bushmen, seamen and invalids who could not go to the polls or to the appropriate polls on the appointed polling day. Thus at the 1913 general elections, when 73·42% of enrolled citizens voted, some 250,000 electors (12% of the electorate) are estimated to have voted by these means. In 1918 and 1919 preferential voting was adopted for the election of members of the two Houses. In 1924 both Houses, without division, passed one of the Commonwealth Parliament's rare successful Private Members' Bill—E. A. Mann's Bill providing for compulsory voting at general elections.

Under the Electoral Act of 1902–7, the High Court, exercising a special jurisdiction, became the Court of Disputed Returns, though it has power to delegate the hearing of petitions to the Supreme Court of the State in which a dispute arises.

Originally the Senate electoral system provided for the election of the first three candidates "past the post" on primary votes. Voters simply placed three crosses of equal value against the three men of their choice. Under the preferential system since 1919 the elector places a number against each name on the ballot. This mode of election to the Senate has the effect of giving one or other party an even more certain clear victory in each State by securing even more certainly the election of the whole party "ticket" of three. ("How to Vote" tickets are prepared by the parties for all voters to ensure this result). Thus if the voting is as follows as regards first preferences:

Labour.		*Anti-Labour.*		*Independent.*	
Smith	210,000	Brown	126,000	Hobbs	21,000
Jones	5,000	Johnson	20,000		
Robinson	2,000	Collins	7,000		

the three Labour men will be elected unless the preference of Labour voters go seriously astray. Smith, having an absolute majority and being declared elected, has his second preferences allotted. These, in accordance with the party "ticket," will mostly go to Jones, who will then be ahead of all others:

Labour.		*Anti-Labour.*		*Independent.*	
Smith	(elected)	Brown	126,000	Hobbs	21,000
Jones	214,000 (5,000 + 209,000)	Johnson	20,000		
Robinson	3,000 (2,000 + 1,000)	Collins	7,000		

An allotment of Smith's third preferences and of Jones' second preferences will mean the election of Robinson:

Labour.		*Anti-Labour.*		*Independent.*	
Smith	(elected)	Brown	126,000	Hobbs	21,000
Jones	(elected)	Johnson	20,000		
Robinson	217,000	Collins	7,000		

Thus the Senate is not elected by one of the variety of methods of proportional representation, nor on the principle of first, second and third "past the post." Preferences will not, of course, run as true to one party as in this artificial example, which serves only to show how the Senate election principle works out to give one party a clean sweep in ordinary circumstances, despite a heavy vote for the other party, two of whose members actually received (in our example, which is typical of many real cases in this respect) first preferences far in excess of those of the second and third Labour men who were in fact elected. An "independent" has little or no chance of election.

While this mode of election usually gives a clear-cut majority in the Senate, it often gives an extreme majority, though this was likely to happen under the original system. Thus after the double dissolution of 1914 Labour had 31 Senators out of 36, though the Opposition polled almost half the votes cast. Just after the First World War anti-Labour had 35 Senators to Labour's 1. Such situations are patently absurd and militate against effective work by the Senate. Another defect in Senate representation arises from the fact that only one half of the Senators retire at a time. This means that the party which obtains a majority at the latest election may be in a minority in the Senate during the next three years. In 1937, Labour won 15 out of 18 Senate seats, yet was in a minority because anti-Labour had recorded an even more sweeping win when the other half of the Senate went to the polls in 1934. Then in 1940 Labour required to carry only two States out of six (i.e. six Senate seats) in order to obtain a majority in the Senate (the fifteen Labour men elected in 1937 having still three years to run). Though Labour received almost half the votes cast, it carried only one State (i.e. three seats) and, since one of its Senators from 1937 had died and his place been filled in 1940 by an anti-Labour candidate, Labour was still in a minority with 17 members (14 elected in 1937 and 3 in 1940) against anti-Labour's 19 members (3 elected in 1937 and 16 in 1940). It is all the same whether the majority party in the Senate gained the bulk of its majority in the latest election, or in the election before last on issues now dead and gone and quite out of the picture in the latest campaign. More will be said of Senate anomalies in another chapter.

Elections for seats in the House of Representatives were orginally on the basis of "first past the post." The electors simply placed a cross against their choice and did not number candidates in order of preference. Thus whether the result gave Smith an absolute majority or a simple majority he was successful:

Smith	10,000	or	Smith	10,000
Jones	7,000		Jones	9,999
Robinson	2,000		Robinson	5,000

With the coming of preferential voting at the end of the First World War, electors placed a number opposite each candidate in order of preference. If Smith had an absolute majority of first preferences all was well. If not, the candidate with fewest first preferences was eliminated and his second preferences allotted. These might confirm Smith in his lead and put him out of reach of remaining candidates. Or they might be so solidly against Smith as to cause his defeat by someone originally lower on the list, when only first preferences had been counted. The allocation of preferences can thus lead to surprising results. For instance this actual case of a trade union ballot conducted on the simple preference principle shows one such possibility: 15,178 votes were cast as follows:

A .. .. 6,091 first preferences
B .. .. 3,477 first preferences
C .. .. 2,818 first preferences
D .. .. 2,792 first preferences

No one had an absolute majority, so D was eliminated and his second preferences were allotted. These were as follows:

A 390
B 1,651
C 751

This made the totals:

A 6,481
B 5,128
C 3,569

Still no one had an absolute majority, so C was eliminated and the next preferences of his 3,569 were allotted. These were as follows:

A 1,038
B 2,531

This made the final totals:

B .. 7,659
A 7,519

Majority for B: 140.

Here a candidate who received barely more than half of the first preferences which a rival candidate received yet managed to carry the day on preferences. The best that can be said for a candidate successful under preferential voting in such an extreme case is that in some degree he was apparently preferred by the majority to any other candidate. But it is notorious that many voters are careless about how they dispose their preferences, after the first one or two, and this carelessness is significant because voters have to place numbers against every candidate or every candidate but one on the ballot paper to make their vote formal On the whole, however, preferential voting in

the single-member electorates of the House of Representatives has given substantial satisfaction; few would favour a reversion to the principle of "first past the post." "The aim of the present method of election, however unsatisfactorily it may be achieved, is to find majorities. The object of proportional representation is to find minorities."[42]

Most of the opposition to existing Australian national electoral systems has naturally come from the advocates of proportional representation. That particular opposition has been kept alive largely because a form of this system is used for elections to the Tasmanian State Legislature. This is not the place to enter into all the merits and demerits of proportional representation.[43] In practice true proportional representation sacrifices stable government for a superficial mathematical exactitude in representation. It tends to multiply parties and groups by placing a premium on the emphasizing of differences. This makes even workable coalition government harder to attain. "Parties should not be too much subdivided and should represent broad divisions of opinion; proportional voting is an unmitigated nuisance, for it attributes to the citizens' opinion an exactness and definition which it does not really possess."[44] It encourages the missionaries of nostrums and cure-alls based on one single principle like credit creation or land taxation when the national situation plainly calls for a comprehensive view and a comprehensive programme from those who aspire to speak for the people and to form their government.

And, of interest in a discussion of parliamentary government in Australia, proportional representation advocates "tend to assume that the general will is not a constantly developing thing, but has a winter sleep in between the short, fierce summers of general elections."[45] Hence they minimize the value of by-elections (which are absent from some proportional representation schemes), whereas in the Australian system of parliamentary government the by-election has come to be regarded as an important institution allowing of the testing of public opinion at a particular time on a particular point. The by-election is also a last resort of Members against party machines and governments—individuals may resign in protest and test public opinion in their constituencies on the issue at stake.

Mathematical enthusiasts who preach proportional representation would be better advised to turn their attention to the considerable inequalities in the numerical size of House of Representatives electorates. The smallest Tasmanian electorate has 25,000 voters while Kooyong in Victoria contained some 82,000 voters in 1940. Thus a vote in the small Tasmanian electorate was three to four times as influential in returning a particular candidate to the Commonwealth Parliament as was

a Kooyong vote. Admittedly the Constitution, in providing for a minimum of 5 Representatives per State and an upper limit to the total number of Representatives (i.e. as nearly as possible double the number of Senators), has been responsible for inequalities—they were one of the concessions made by the big States for federal union. But the fact remains that the inequalities are larger than they need be (because there are at present wide variations within the *same* State, e.g. between Kooyong's 82,000 and Wimmera's 45,000, in Victoria) and they lead to inequity between parties in the general electorate as a whole.

The following cases sufficiently demonstrate the inequity. The first pair of cases are actually from State politics, but they show clearly enough what happens whenever metropolitan industrial electorates are drawn to embrace much greater numbers of voters than are country or middle-class suburban electorates:

> "At the South Australian elections (March, 1927), the Labour Party polled 115,000 aggregate votes, but returned only 16 members, whilst the Pact Nationalist Farmer Party, polling only 108,000, secured 28 members. The Labour Party, during its term of office, introduced a Bill to alter the method of election. The measure was, however, defeated by the Legislative Council (elected, of course, on a property franchise). The Victorian election (April, 1927), fought on gerrymandered boundaries (the single electorates varying from 7,000 in some country districts to 25,000 in metropolitan districts), resulted in the Labour Party receiving a substantial majority of the aggregate vote, but only 28 seats out of 65."[46]

The other case is a Commonwealth one:

> "For the House of Representatives (1925) we secured 1,313,949 votes, whilst all Anti-Labour candidates polled 1,593,535 votes, a difference of 279,586. Labour obtained 23 seats, whilst 52 Anti-Labour seats were returned. In other words, Anti-Labour members secured 29 additional seats with the extra vote of 279,586, whilst Labour had to receive 1,319,949 votes for its 23 members."[47]

Greater equality in the numerical size of electorates would obviate inequities of these proportions. An increase in the numbers in the House of Representatives would be the ideal occasion for securing greater equality between electorates.

ADDENDUM

While this and following chapters were in the press (May, 1948), the Commonwealth Government promoted the passage of two Acts of major importance. One enlarges the Parliament, increasing the seats in the House of Representatives after 1949 from 75 to 123, and those in the Senate from 36 to 60. (It will be recalled that, as long as Section 24 of the Constitution stands in its present form, the Senate must be as nearly half the

size of the House as possible, so that any increase in the latter requires, irrespective of the merits of the case, a proportionate increase in the Senate.) The second Act replaces the present method of Senate election by a system of proportional representation. As it is not now possible to recast Chapters II, V, VI, and VII, they should be read in the light of the reforms just indicated and of the following facts and comments.

The 1947 Census returns revealed the following position:

			H. of R. at present size.*		H. of R. raised to 123.*	
	Population	Estimated Electors		Average Electorate		Average Electorate
State.	1947.	1949.	Seats.	1949.	Seats.	1949.
N.S.W.	2,985,000	1,970,000	28	70,000	47	42,000
Vic.	2,055,000	1,400,000	20	70,000	33	42,000
Qld.	1,103,000	700,000	11†	64,000	18	39,000
S.A.	646,000	445,000	6	74,000	10	44,000
W.A.	501,000	320,000	5	64,000	8	40,000
Tas.	257,000	165,000	5	33,000	5	33,000
Aust.	7,547,000	5,000,000	75*	67,000	121*	41,300

* Present House includes a Member for the Northern Territory, without a vote on general legislation. Under a new Act there will be a Member each for the Capital Territory and the Northern Territory with similarly limited status.

† Under the 1947 Census returns, Queensland would in any case have had one additional member from 1949. At present Queensland has 10.

With 123 Members the House of Representatives will remain, by comparison with the Lower Houses of other Dominions (allowing for comparative populations), a small Chamber. But the reform will go some way to meet the points made in Chapters V and VII in favour of a considerable increase upon present membership. The quality of the reinforcements is, of course, a matter which remains in the hands of parties and electors. All Members should now have more workable electorates. There will be a welcome evening up and down of numbers from electorate to electorate and from electorates in one State to those in another, though the Constitution, in requiring that no original State shall send fewer than five Members, still puts a premium on Tasmanian vote-values.

The Senate now provides ten seats to be filled from each State, irrespective of population, instead of the original and present six. This will mean that, since the 18 Senators elected in 1946 hold their seats until after the election due at the end of 1952, some 42 places will remain to be contested at the general election due in 1949 (instead of 18 as would have been the case but for the new Act). But 12 of the Senators elected in 1949 will be elected for three years only and will stand for re-election in 1952. In that year and subsequently 30 Senators will be elected at a time for six-year terms.

No precise predictions can be made about the effects of the introduction of proportional representation into Senate elections. But certain probabilities can be indicated. (1) There will be a continuing tight control by the State "machines" of the parties over Senate candidatures, except perhaps where State-wide party selection ballots are held. (2) Proportional representation will almost certainly work in such a way as to make some 40 Senate seats "safe" for their incumbents for life—or at least "quam diu se bene gesserint," with the State party machines or "pre-selectors" as sole judges of good behaviour. Hence the contrast with the present system will be marked, for now the electors "plump" for one whole Senate ticket or the other and Senators are swept in or out on the electoral tide irrespective of personal merit. (3) There will be an end, from 1953, of the extreme unbalance of party representation which occurs fairly regularly under the present Senate electoral system (see above, Chapter II). On the contrary, with a Senate which retires by halves, with a fairly evenly divided electorate, and with the swing of the pendulum, it is to be expected that proportional representation will mean recurrent periods of near numerical deadlock between the two sides of the Senate. (4) While the Australian virtual two-party system with single-member electorates continues for the House of Representatives, and the parties remain organizationally strong, the worst characteristic effects of most proportional representation systems (i.e. minor and splinter parties which threaten to replace majority by weak coalition government) are fortunately unlikely to be much in evidence even in the Senate.

Of interest here is the following table of Senate election results 1903–1946:

Year.	Labour candidates elected.	Anti-Labour candidates elected.
1903	14	5
1906	4	14
1910	18	Nil
1913	11	7
1914 (double dissolution) ..	31	5
1917	Nil	18
1919	1	18
1922	10	8
1925	Nil	22
1928	7	12
1931	3	15
1934	Nil	18
1937	16	3
1940	3	15
1943	19	Nil
1946	15	3

CHAPTER III

THE LABOUR PARTY

"Though this Platform be like a piece of Timber rough hewd, yét the discreet Workman may take it, and frame a handsome Building out of it."

Gerrard Winstanley, 1651.

"....The formative power in Australian national life of the last two generations has mainly been Labour idealism.. From thence largely came the inspiration that produced humanitarian legislation, educational advance and industrial organizations. Conservatism or Liberalism (for these opposing parties have generally coalesced) has seemed to be generally bankrupt of ideals and constructive policy, being content to give a qualified assent to the more moderate proposals of Labour, to keep a brake on too swift a reform and to keep guard on the nation's purse. In a word, Labour has been interested primarily in men, the 'Parties of Resistance' primarily in money."

The Bishop of Armidale, 1931.

"....It has struggled with every handicap to which political parties are heir. It has been burdened with carecrists, turncoats, hypocrites, outright scoundrels, stuffy functionaries devoid of sense and imagination, bellowing enemies of critical intelligence, irritatingly self-righteous clowns bent on enforcing suburban points of view, pussyfooters, demagogues, stooges for hostile outside groups and interests, aged and decayed hacks and ordinary blatherskites. Every party falls heir tc these. But it has outlived them all and still stands for something: it stands for a social democratic Australia."

C. Hartley Grattan, 1944.

I

LABOUR party philosophy and Labour Party organization have each materially affected the processes and the spirit of Australian parliamentary government. It is impossible in day to day politics to separate these two aspects of the Party, but for convenience the significance of each will here be examined separately.

II

The Australian Labour Party is primarily a class party, a fact of which it is proud and for which it makes no apology. It is the champion, as it leaders used to say, of the "masses" against the "classes." It grew out of the trade unions of the Australian working people. Its members are predominantly working

people, though it has developed a wide electoral support. Its members join the Party because they feel that society as it is does not sufficiently serve their purposes and their interests. At the same time they identify their own best purposes and interests with those of the Australian nation as a whole. They seek a society in which the working people possess "a full human share in the control of industry as in the control of government." This society will provide social and economic security. Labour's idealists believe with Jaurès that:

> "Socialism is in the highest degree a democratic movement, since it sets out to organize the sovereignty of all men in the economic as in the political sphere, and it will found the new order on the rights of the individual, since it will give to every man the means of development which alone can enable him to realize himself completely."

In Australia, these Labour visions and plans have not, for the most part, the definiteness of socialist blue-prints. The desire is that the Party should push forward empirically, using methods of social control through the agency of Parliament to achieve a richer yet égalitarian society.

Hard experience has taught Labour men and women that, without reasonable economic equality, political democracy cannot be fully realized. They have found that, however apparently perfect is the machinery of political democracy, a man with wealth markedly above the average has a disproportionate opportunity to influence the conduct of affairs, more especially as they touch his own material interests. Labour has always found that a determined man with great capital can repeatedly violate the democratic principle that each shall count for one and none for more than one.

From this realization of their inferior economic status, and their consequent individual social impotence in a capitalist community, has come the deep-rooted Labour emphasis upon solidarity. Provided that the conditions of political democracy have not been fundamentally vitiated by economic inequality, a solid majority which knows its mind and stands its ground can prevail. Only by resort to unconstitutional coercion can its opponents defy it. Labour men and women know from political and from industrial experience that by solidarity they can effectively challenge the injustices they feel under the existing social order. And though there are some things for which in the last resort it would fight, Labour aims at gaining and guarding its ends by peaceful means under the Constitution:

> "When we of the Labour Movement talk of the Social Revolution, we have no thoughts of barricades in our minds, nor do we conjure up visions of armed assaults upon the citadels of power. Our social revolution is one of legislative achievement, of radical changes in man's opinion, reflected in such political, industrial and economic transformations as will constitute a new and better way of life for all."[1]

The rank-and-file of political Labour has consistently repudiated the advocates of a revolutionary seizure of the reins of government, whether syndicalist or communist, even when the general *economic* objective of those advocates was the Labour objective—the achievement of socialism.

For, equally with socialism and economic reform, members of the Labour Party believe profoundly and unshakably in self-government by majority rule under a popular Constitution. All the evils which they attack spring from the selfish, misguided or downright dishonest use of power by a minority. Labour believes that a minority with power will always tend to abuse that power. So Labour not merely champions majority rule but conscientiously adheres to the majority principle itself. There always has been and there probably always will be a minority within the Labour Movement which believes that ends alone, and not means, really matter. They argue, and some of them seek to act upon the argument that, socialism being the end, every means—fair or foul, constitutionally—must be used to attain it. The great bulk of Labour men, more liberal in temper, realize that ends can be poisoned by the use of bad means. They realize, too, that there is much good in some of the institutions and procedures which have been evolved over the centuries, that human society is fragile, that they themselves stand to lose much by attempting a hasty and indiscriminate overthrow of well-tried institutions and generally accepted standards of political and social behaviour. So Australian Labour is essentially a parliamentary party.

Labour recognizes that the majority of Australians is not as yet seized of the urgency of thorough-going socialization along the whole industrial front. Nor, for that matter, is the whole of its own membership. In the circumstances the Party realistically reckons that gradual progress towards the objective by reform and piecemeal innovation is preferable to no progress at all. It has learnt from experience that even this Fabian approach is dependent on the floating vote of the fundamentally unconvinced, upon whom Labour must count for an electoral majority. In Australia it is not true, as it is to some extent true in Britain, that white-collar support which Labour has received has been more enthusiastically socialist than is much of its trade union following. Australian Labour's white-collar support has never been wholly dependable. Until Australian Labour mobilizes a voting majority of socialists, it remains dependent on the support of a mixed bag of socialists and radicals, nationalists and internationalists; unionists, shop-keepers, small farmers, professional men and middle-class people; Protestants, Roman Catholics and atheists.

Labour could, of course, keep its socialism pure and doctrinaire and remain a much smaller party without immediate pretensions

to governing. That was, for decades prior to 1936, the practice of the French Socialist Party of Jaurès and Blum. But Australian Labour quite early in its history chose to become an effective governing force, even if its final aims could be achieved but slowly. It embraced the parliamentary system fully. The Labour position on parliamentary government has been expressed admirably by the "Westralian Worker":

> "The Labour Party is a Socialist Party.... Its Socialism is built upon a profound faith in the people and a determination to press for necessary social changes upon the basis of Democracy and Justice. We reject all demands for Dictatorship, whether from the Left or from the Right. We take our stand upon that faith in reason which looks to the declared will of the people as the only valid source of power. So long as this will is nationally respected we are confident that the historic forms of Parliamentary Democracy provide a highway along which the nation can pass peacefully from an acquisitive to a Socialist society. We warn the enemies of Democracy, whether open or secret, that the declared will of the people must prevail. The majority of the nation is entitled to be master in its own house."[2]

As long as Labour is striving to change a fundamentally capitalist society into a socialist commonwealth, it remains, in or out of office, in a very real sense an "opposition" party—with the job of watchdog against hardship, oppression and injustice. While striving towards socialism, it struggles for fairer play within capitalism—healthy conditions in home and factory, a decent living wage, regular employment, wider facilities for education and medical attention, aid to the aged and infirm, civil liberties for all. Labour leaders, like Gladstone, do not in practice often bind themselves to dogmas, but attack politics the realistic way—they get down to the righting of grievances, which is in the true tradition of Parliament.

This does not necessarily imply any abandonment of the socialist objective; it means the seizure of chances, however small, as they come, to promote national, and in particular working class welfare. Within the Party, says the critic, not unfairly,

> "The collectivist aims are the passion of a very energetic minority, the reformist programmes are the tool of a sensible but uninspiring majority. This majority is conservative and empirical in the familiar British tradition; it accepts an 'objective' which is satisfactory to the 'militants,' but pursues a policy of palliative which they despise. Thus there is within the Labour Movement a perpetual bickering between the practical men and the idealists."[3]

The man on the extreme Left sees the same Labour trait in harsher terms:

> "First principles, whenever they come into apparent conflict with the popular mind, are relegated to the background and in their place arise policies more in keeping with the reactionary idea of a mass ignorance. Unfortunately, Labour political parties are by no means exempt from this dishonest and weak method of submission to the popular will."[4]

This is characteristic Communist comment. Passing over the obvious point that the whole basis of democracy lies, not in the dictatorship of a Communist élite but in submission of the Executive to an ascertained popular will (however unpalatable that may be to the zealot), the immediate flaw in Lane's thesis is that his version of first principles never has been that of the Australian Labour Party or its leaders.

Labour Party leaders have never been in two minds about that point. Labour's first Prime Minister, J. C. Watson, made a long speech on June 29, 1905, dissociating the Party from anything resembling revolutionary socialism. Labour's second Prime Minister, Andrew Fisher, wrote:

> "No [Labour] Party worthy of the name can deny that its objective is socialism, but no socialist with any parliamentary experience can hope to get anything for many years to come—other than practical *legislation of a socialist nature.*"[5]

W. G. Spence, one of the outstanding trade union leaders in the pre-1916 Party, wrote in 1909:

> "As to whether Labour will nationalize the land, the means of production, distribution and exchange, the question is hardly worth discussing at this stage, except as an abstract proposition."[6]

The Communist would say that this is sufficient evidence to make any self-respecting socialist leave the Australian Labour Party for points further Left. But, as ever, he would be disregarding or attempting to override the natural empiricism and the native conservatism of the average worker and the prudent faith of the Labour Party in democratic majority rule. At the same time the worker who belongs to or votes for the Labour Party does ask for some progress towards the goal.

The early sessions of the Federal Parliament were spattered with demands from Labour that the Federal Government take over the manufacture of many things, from pig-iron to tobacco, cigars and cigarettes. Men like C. Frazer (once Labour Postmaster-General) and E. A. Roberts (once Labour Honorary Minister) fought hard to break the original three party system from within the Labour Party. They were socialists and wanted to force Labour into a socialist camp and all non-Labour into a single anti-socialist camp. Between 1908–10 the two party system emerged, but the Labour camp was still wedded to evolutionary and parliamentary methods.

The 1905 Labour Conference laid down as the Labour objective "the collective ownership of monopolies and the extension of the industrial and economic function of the State and the municipality." Enlarging on this first "Objective," William Holman, New South Wales Labour Premier, said:

> ". . . . Where those monopolies have reached the stage of the complete centralisation of an industry, where all the articles of a certain kind within a given community are made under a single control, then we say

> we have arrived at a stage of things which is absolutely incompatible with the continued freedom, happiness or development of the individual citizens of that country. If any man or group of men is permitted to establish a monopoly in a single necessity of life, to that extent that man is monarch of the community, and as free, independent citizens of Australia we deny that we .... established self-governed and constitutional institutions here in order to subject ourselves again to unrestricted and unfettered tyranny of an economic mastership such as monopolists would be able to impose upon us."[7]

It is to be noticed that Labour's opposition to monopolists was based, not simply on hostility to economic exploitation, but even more strongly on its determination that no one should enjoy the potential *political and social* power and influence over his fellows which the monopolist possesses.

The 1905 phrasing of Labour's Objective was insufficiently unequivocal for the "militant" elements so vociferous in the Party at the end of the 1914–18 war. The efforts of over a decade culminated in the acceptance by the 1921 Conference of the formula "The Socialization of Industry, Production, Distribution and Exchange." Still the means were to be constitutional and the end seemed, to the zealots, as far off as ever. Indeed the war had left Australian capitalism more deeply entrenched than before.

By 1934 the temporary post-war "militant" ascendancy had long passed and the one-step-at-a-time spirit again prevailed. What is more, the depression and the 1931 debacle had been the signal for many Party members with very limited vision to shout their over-simple panaceas. Most of them had shouted, not for socialism, but merely for credit expansion. Any élan saved from the 1931 wreck tended to become stranded on the reefs of credit controversy. Hardly was the Party wading clear of currency-reefs and internal differences symbolized by the Spanish War issue when the 1939 War once more diverted energies from socialism to national survival.

In the years following 1939, while national survival hung in the balance, the Party tacitly acquiesced in the view eagerly urged by its opponents, that socialism should not be pushed to the detriment of national unity behind the war effort. This did not prevent Labour's implementing its social reform planks in the later war years. More recently Labour has used parliamentary methods to establish Government inter-State and overseas airways, overseas telecommunications, to extend Government banking activities, and, finally, to pass legislation for the nationalization of all (except State Government) banking institutions.

As it came only slowly to adopt the Socialist Objective, so Labour came only gradually and uncertainly to advocate Unification, in the sense of unlimited legislative powers for the Commonwealth. In the Convention days Labour stood for wider

Commonwealth powers, less because the optimum scale for social legislation and economic planning was widely appreciated than because the Party urgently desired to get as much of the legislative field as possible out from under the dead hand of reactionary appointive or property-franchised State Upper Houses. Labour has since formally advocated unification, not from any blind love of centralized power—indeed, Labour has always insisted that modified State or provincial administration with delegated powers will remain—but because the success and worthwhileness of social legislation and economic planning clearly depend on their being nation-wide in scope.

In the early days of the Commonwealth, Labour supported all proposals for wider powers: the Labour Party members joined, for example, in the unanimous vote of both Houses of the first Commonwealth Parliament in favour of the Commonwealth's having full industrial powers.[8] During debates on the Conciliation and Arbitration Bill they urged that State public servants should come under the Commonwealth Arbitration Court. They were firm supporters of the "New Protection," maintaining that uniform labour conditions and legislation were the natural corollary of uniform tariff laws. The Fourth Commonwealth Australian Labour Party Conference (1908), however, rejected a motion for unlimited Commonwealth legislative powers. The Fifth and Sixth Conferences, of 1912 and 1915, both rejected unification motions.

Meanwhile the Federal Parliamentary Labour Party proved much less considerate of State authorities than did Conference. Andrew Fisher and his Governments in 1909 and in 1910–1913 showed scant respect to the States. In 1909, as Prime Minister, Fisher refused to attend the Premiers' Conference at Hobart. He went further, refusing to state for that Conference the policy of his Government for the liquidation of the "Braddon Blot" (Section 87 of the Constitution which provided for a temporary division of customs revenue between Commonwealth and States), which he held to be a matter for the Commonwealth Parliament alone to decide. In 1911 and again in 1913 the Fisher Government asked the electors to give the Commonwealth Parliament wide legislative powers over trade and commerce, corporations, industrial matters, trusts and monopolies. In 1913 these proposals were only narrowly defeated. The Labour Party was not unanimously in favour of the Fisher referenda proposals: at least one Labour State Premier, W. A. Holman of New South Wales, offered alternately active and passive opposition.

The Fisher referenda, followed by the Great War, drew the attention of more and more people inside and outside the Party to the advantages of wider Commonwealth powers. Already in 1910 a South Australian Labour Conference had adopted the abolition of State Governors as a policy point. In 1917 a

Victorian Labour Party Conference approved of the abolition of State Parliaments and the division of Australia into 20 provinces with delegated powers.

In 1918 the Seventh Federal Australian Labour Party Conference at last adopted (by 21 votes to 7) a plank reading:

> "Unlimited legislative powers in Australian affairs to be vested in the Commonwealth Parliament; devolution of adequate local powers upon subordinate legislatures and municipalities, elected by adult suffrage."[9]

It was the Eight Conference (1919) which adopted what now stands as Section 3 (a) to (e), under the heading "Constitutional Amendment Nationalization, Tariffs, etc." in the Federal Platform.[10] This was the period when the Socialist Objective was also adopted and there is a close connection between the two, for the latter in practice would probably require a high degree of unification as a prerequisite.

Not only was there to be unification, but the Senate was to be abolished, Privy Council appeals eliminated, and uniform taxes, electoral rolls and municipal arrangements were to be introduced.[11]

In 1926, on a referendum for certain proposed extensions to federal powers sponsored by the Bruce-Page Government, as later in 1936, there was a complete lack of Labour solidarity:

> "Owing to instructions from State Executives, the Federal Executive delegates were equally divided, but, ultimately, by a majority, they decided to declare the Referendum 'an open question'."

On which the Parliamentary Labour Party commented in its report of the 1926–27 Session:

> "The Referendum campaign .... affected, for the time being at any rate, the solidarity of Labour. We, therefore, suggest that Conference should make it clear what attitude is to be taken by all members of the movement on any future proposals that may be brought forward to amend the Constitution."[12]

In 1930 came the proposal of the Scullin Government that the people allow the Constitution to be amended in such a way that the Commonwealth Parliament have power of future amendment by simply passing proposed amendments through both Houses of Parliament with absolute majorities. A hostile Senate prevented this complete unification proposal from being submitted to the people before the Scullin Government was defeated. With that defeat the project lapsed.

In 1936 referenda on proposed wider Commonwealth powers put forward by an anti-Labour Government again divided Labour's ranks. The proposals were defeated. During the Second World War Labour introduced "uniform taxation" legislation for the duration—the Commonwealth ousting the States from the direct taxation field but compensating them with grants for the revenues lost. The scheme was challenged by the

States in the High Court where, to their surprise, the Court found the legislation valid on grounds which made constitutional a similar permanent scheme. This was duly introduced in 1946 before the war-time legislation lapsed. The steadily growing Commonwealth financial ascendancy has served to exacerbate rather than to calm the controversy over Commonwealth-State constitutional relations generally.

In 1942 the Labour Government sought a temporary extension of certain constitutional powers from the States to the Commonwealth by voluntary reference of the State Parliaments under Section 51 (xxxvii) of the Constitution. The proposal on this occasion was to cover the reconstruction period only, but, like the similar 1915 proposal for certain permanent transfers of powers, it failed. The proposals of 1942 went to a referendum in 1944. The Labour Party, in some States at least, was again divided, and the referendum was lost. In 1946 Labour won acceptance of a constitutional amendment establishing a general Commonwealth power over social security matters.

There would undoubtedly be greater solidarity in the Labour Party once the attainment of unification removed the recurrent frictions between Federal and State Labour Governments. Such friction has been most damaging to Labour during both the Fisher-Holman and the Scullin-Lang clashes. These are not the only instances; as long as the present federal framework remains difficulty may be expected.

> "Our present experience clearly shows that, although Federal and State Governments may belong to the one party, yet on questions of exercise of power they are liable to disagree as much with one another as they do, in matters of principle, with members of other parties."[13]

Add internal dissension to frustration of attempts to realize the Party platform and the aggregate is the disadvantage which Labour suffers directly as a result of continued federalism. But quite apart from consideration of party advantage, stresses and strains developing from federal division of powers do not make for the healthy development and exercise of parliamentary government at either State or Federal levels. Labour parliamentary leaders in both Commonwealth and State spheres have at times been quite as willing as leaders of other parties to take shelter from responsibility in the crevices of the Constitution.

At two ideological extremes of the Labour Movement are to be found Communists and Roman Catholics. The Communists, from outside, assail the Labour Party—except when tactical considerations call for dissembling—for its choice of immediate, reformist effectiveness rather than of an uncompromising policy of socialism. The Roman Catholics in the Labour Movement, on

the other hand, from within the Party support Labour's gradualist course because the social teaching of its Church leaders is opposed to a complete programme of socialism in the European tradition.

Behind its day-to-day tactics the Communist Party has a revolutionary tradition, derived from Communist Parties overseas, and particularly from the Russian Communist Party. The Australian Communist Party swears by the whole body of Marxism—but it is Marxism as construed from time to time by the Soviet Russian authorities and the Soviet-approved élite of the national communist parties elsewhere, still apparently as closely knit together as in the heyday of the Communist International. It stands traditionally for a clean break with the existing Australian social and political systems. New government agencies, administrative reforms and new legislation under the existing liberal parliamentary dispensation are, in Communist eyes, just so many palliatives within a basically unacceptable social framework. Lenin himself, in 1913, dismissed the Australian Labour Party as of little worth:

> "In reality it is a Liberal-bourgeois party, and the so-called Liberals in Australia are really Conservatives.... The leaders of the Australian Labour Party are trade union officials, an element which is everywhere most moderate and 'capital-serving' but which in Australia is altogether peaceful and purely Liberal."[14]

Day-to-day tactical considerations and, above all, the interests of the Soviet Union, have at times dictated cessation of Communist attacks on Labour or even anti-Labour Governments. In Australia such tactics have deceived none of the parliamentary parties.

The ultimate determination of the general Communist "line" came, until the dissolution of the Comintern in 1943, and apparently still comes, from outside Australia.[15] The first consideration of the "line" is the "Soviet Fatherland" rather than the Australian working man. The "line" may be reversed overnight with an air of perfect consistency and sublime infallibility. Consequently there is little significant debate on policy, as distinct from local tactical issues, within the Australian section of the Communist Party. And even decisive tactical discussion is the business of a small inner clique. Phrases and slogans are then syndicated to the rank-and-file members and to "fellow-travellers." The keenness and energy of the rank-and-file Communist Party member, sustained by "Communist discipline," is far greater than that of most of his opposite numbers in the Australian Labour Party.

In even the smallest matters of political and trade union affairs Communists regard themselves as unbound by "bourgeois ethics" and hence free to work their Party's advantage as and

when and how they can. Lenin laid it down for Communists that "morality is that which helps to destroy the former society of exploiters." Any organization can be created or infiltrated for use as a "front" to serve the purposes of Communist power. Within the Labour Movement every attempt is made, by fair means or otherwise, to discredit and hound opponents from executive positions in working-class and community organizations.

This whole attitude to politics is rooted in the dogmatic basis and conspiratorial methods of the Communist tradition. Ends entirely transcend means, the sense of moral and even intellectual integrity as understood by Western democrats is lost or abandoned. The whole process is rationalized as a glorious overthrow of "bourgeois ethics" as being inimical to working-class objectives. The fundamental difference between Labour and the Communists appears to be this: the Labour man is trying at once to extend and to abide by the rule of law and morality, nationally and internationally; the Communist is out for absolute power even at the price of re-introducing to the national sphere the "real-politik" which has so long characterized and vitiated international relations. The Communist approach makes no pretence to be anything other than alien to the whole set of assumptions upon which parliamentary government operates.

The Communist Party's Australian successes in the political sphere have been negligible. No Communist candidate has been returned to the National Parliament and one only to a State Legislature. There is reason to believe that the Communists' small measure of success in the Labour Movement would have been much smaller still had the Labour Party under Tudor and Charlton not been in the electoral doldrums following the conscription schism when the Australian Communist Party began its career. Electorally the Communist Party has been a minor embarrassment to the Labour Party.

To guard itself from Communist "white-anting" the Australian Labour Party Conference of 1937 resolved that:

> "In no circumstances can any branch or member of the Party be associated with members of the Communist Party or its subsidiaries in holding joint meetings in advocacy of a united front or any other matter. Any branch which contravenes this rule must be declared bogus and any member who participates will be automatically expelled."

Any such rule can, of course, be exploited for factional ends, as appears to have been the case when Maurice Blackburn, M.P., was expelled in 1941.[16] But from the viewpoints at once of parliamentary and of electoral advantage in Australia a successful social-democratic party is well advised thus to keep Com-

munists, individually and collectively, at arms' length. Lenin had a maxim, "outside democracy, no socialism." The Communist conception of democratic political behaviour is, however, quite unacceptable to the social-democrat. If the Parliamentary Labour Party were to contract an alliance with a hypothetical Parliamentary Communist Party and depend on that party for a majority it would have to be assured of a frank and honest partnership uninhibited by ulterior considerations. Such are the purposes, methods, standards, record and overseas affiliations of the Communist Party that the Labour Party can feel or accept no such assurance.

In the matter of elections, significant sections of the Australian floating vote—and even of the Labour vote itself—would undoubtedly react against the Labour Party if it entered into any degree of alliance with the Communist Party. This appears to have occurred during the 1944 Constitutional Referendum campaign when the Communist Party temporarily succeeded in mounting the Government band-waggon.

Though Communist intellectual fervour may conjure up an Australian manifestation of that convenient phenomenon "the masses," latently willing to be led to its destiny by a Leninist élite, the fact remains that the Australian working man resents both the rôle and the destiny so dogmatically assigned to him. The average Australian worker in fact finds so much which is acceptable to him in Australian life that he simply wishes to reform what weighs heavily on him. He has little or no time for political zealots. He does not wish to live life at the Communist tempo. He does not burn with the political fervour of the devotees of that party. It is the Communist tempo, dual morality and fanatical concentration on politics and upon the interests of Soviet Russia which are "un-Australian" rather than the Socialist objective. A large proportion of Australians have no fundamental antipathy to planning of social and economic activity, upon a democratic parliamentary foundation. But they have a loathing of what Benedetto Croce has called "the nationalization of the soul." They have seen enough of events abroad to know, moreover, as the British Labour Party's "Daily Herald" put the position on March 14, 1946, that:

> "Communism in practice means dictatorship over the proletariat by a Communist bureaucracy, suppression of all other parties, suppression of free speech and individual rights, no free Press, no free Parliament, and secret political police to ensure that any opponent of Communism, actual or imagined, is informed against and rapidly removed."

The fact that Australian Catholicism is predominantly Irish and not English in background is fundamental to any understanding of the place of the adherents of that Church in the

Australian community, and, more particularly, in Australian politics.

The likelihood of a connection between a large proportion of the Roman Catholic sixth of Australia's population and a Labour Party dates back in a sense to the Fenian scares of the 1860's and 1870's and Henry Parkes' New South Wales Treason Felony Act and even to the earliest convict days, when the Irish were already the national scapegoats. For the Irish who came to Australia were largely workers or families in poor circumstances with a keen political sense. The Fenian troubles roused their old hostility to England and prepared them naturally, in Australia, for the most vociferously nationalist of the political camps, which, from 1891, was the Labour Party. The Hon. Hugh Mahon, Labour M.P. for Kalgoorlie and a former Minister, was expelled from the National Parliament on the motion of Prime Minister W. M. Hughes as recently as 1920 for a blistering public speech against British rule in Ireland.

The Roman Catholic membership in the Australian Labour Party is comparable with the Roman Catholic bloc (centred in New York, Boston and Philadelphia) in the United States Democratic Party. Large Australian and American Roman Catholic memberships joined those particular parties in preference to their respective opponents for historical and international reasons and have remained with them after many of the original reasons substantially disappeared. It would, however, be inaccurate to give the impression that all Roman Catholics belong to the Labour side of politics. There are large numbers of upper and middle class Roman Catholics whose sympathies are on the other side, and at least one Australian accepted as anti-Labour leader and Prime Minister, J. A. Lyons, was a devoted Roman Catholic.

On most issues, Roman Catholics in the Australian Labour Party merge easily in the general membership. At times, however, Roman Catholic members have differed strongly from their fellow party members. In 1913–14, for instance, "a strong phalanx of Roman Catholic Labour men" followed Meagher's lead in the New South Wales Labour Caucus against Holman. It was in July, 1913, that the Roman Catholic Archbishop of Melbourne(Dr. Mannix) was reported as saying:

> "It is necessary in Australia for Catholics to stand together. Minorities have only to bide their time, and use their power, and the opportunity will come to them. The contending parties are more evenly balanced than in Britain; consequently it is easier for Catholics in Australia to hold the balance of power."[17]

But at that time Roman Catholic influence was relatively small in the Party; "in those days the Labour politicians were chiefly Scots and English of the dissenting type."

During the Spanish War (1936–39), relations between Roman Catholics and some non-Catholic members of the Party wore thin because the Papacy apparently wholeheartedly supported Franco, who had the assistance of international fascists in Spain. By that time the Roman Catholic element in the Party had become strong enough to force a compromise in Australian Labour Party foreign policy—a declaration for virtual isolationism rather than for collective security under or apart from the League of Nations.

A fundamental division between Roman Catholic and many non-Catholic members of the Party over the socialist objective was always latent. At the beginning of the Party's history, Cardinal Moran expressed his Church's fear of socialism.[18] The Church as an institution had little to fear from anti-Labour, but from European experience it feared socialism as one of the potential enemies of its property, its income and its freedom of action.

How Roman Catholics could enter or remain in a party whose objective is "the socialization of industry, production, distribution and exchange" has, indeed, sometimes mystified the outsider. For Leo XIII in his famous Encyclical "Rerum Novarum" (1891) authoritatively laid down that:

> ". . . . the main tenet of Socialism, community of goods, must be utterly rejected. . . . The first and most fundamental principle . . . . must be inviolability of private property."

Fifty years later Australian spokesmen of the Church have repeated this ruling:

> "The Catholic Church lays it down as a principle of economic and political morality that socialism is contrary to the rights, needs and dignity of man."[19]

And specifically on the Australian Labour Party objective:

> "I do not think any Catholic can in conscience support that objective as an objective; above all, if it be intended as a future permanent regime . . . . the system would violate moral and social justice."[20]

A possible clue to the basis of Roman Catholic willingness to belong to the Australian Labour Party notwithstanding its Objective is to be found in a passage from Pius XI's Encyclical "Quadragesimo Anno" (1931):

> "Whether socialism be considered as a doctrine, or as an historical fact, or as a movement, *if it really remains Socialism*, it cannot be brought into harmony with the dogmas of the Catholic Church . . . .; the reason being that it conceives human society in a way utterly alien to Christian truth."[21] (Our italics).

Remembering that the Popes have thought in terms of Continental, anti-clerical, and predominantly Marxian socialism, it would appear that the social democracy (unconnected with anti-clerical tendencies) of the Australian Labour Party can hardly

be reckoned immediately obnoxious to Roman Catholic social teaching. This explanation would seem reasonable in the light of the world broadcast of Pope Pius XII on September 1, 1944, when he spoke of "an ever-increasing mass of workers . . . . up against those effective concentrations of economic wealth, often hidden under anonymous forms, that succeed in evading their social duties," and went on to admit that:

> "When distribution of property is an obstacle to this end [i.e. the general welfare], which is not necessarily an outcome of private inheritance, the State should in the common interest intervene, regulate its activities or issue a decree of expropriation with suitable indemnity." (*New York Times* verbatim text).

The official Roman Catholic alternative to socialism is the vaguer concept "social justice"—opposed to complete socialism, very critical of classical capitalism, yet solicitous for personal property.

> "If there is to be true peace in society, there must be social justice, which demands the just distribution among the people of the goods which belong by natural right to the people. To fail in that just distribution, as Industrial Capitalism has failed, is the crime of social injustice. It is a serious moral wrong. It is a violation of the Commandment: 'Thou shalt not steal'—a sin so terrible that, in the words of Sacred Scripture it cries to Heaven for vengeance.... This social injustice is, unfortunately, very evident in Australia."[22]

It is clear that there is still a great deal of the Labour Party's programme to be implemented which is consistent with this broad interpretation of the term "social justice." Moreover, with the distribution of constitutional powers as at present in Australia, there is an increasing Labour vogue for accentuating immediate limited steps of "Nationalization" and "Socialization" as distinct from "Socialism," which should allow of continuing solidarity amongst the forces at present combined within the Labour Party.[28] There appears, therefore, to be ample reason from his own point of view why the social democrat within the Labour Party, under the self-imposed necessity of marshalling free electoral majorities, should work to maintain the unity of the working class in the Labour Party as it now exists.

The relationship of Communism and Roman Catholicism to the Australian Labour Party have been discussed at some length early in this chapter because they have excited interest or controversy in all political camps and because adherents of these two creeds have repeatedly clashed with each other within the Labour Movement in matters of both theory and practice directly bearing on the smooth parliamentary government of the Commonwealth.

The parliamentary Labour Party is, however, still based firmly in the great body of moderate trade unionists, for the most part easy-going, secularly-inclined Australians, convinced that progress in the general direction of socialism is the way of salvation from the political, social and economic injustices of "things-as-they-are."

The Labour Party was born of the failure of these trade unionists in one of the greatest crises of their history. It was the child of the unions and they brought it up very largely in their own image. For their pains it rewarded them with ameliorative reform legislation after their own hearts. It so created and shaped industrial institutions as to make the Commonwealth safe for industrial trade unions and for an experimental approach to socialism. Most of the trade unionists, and certainly most of the Labour voters, appear to have preferred their politics that way.

The unions were, of course, a product of capitalism; if capitalism were suddenly and sweepingly overthrown their whole basis and function would require transforming. They have come to be fully accepted as part and parcel of the existing social order. When it comes to the point, neither leaders nor rank-and-file are much more enthusiastic about the sudden, fundamental, personal and institutional readjustment involved in major social revolution than are ninety per cent. of the rest of mankind. In the face of partial achievement many appear to have become at some points conservative. They have perhaps been intellectually and temperamentally influenced by the fact that half the union battle lies in conserving past victories in the field of hours, conditions and wages. But upward pressure of ideas and young aspirants for office have the salutary effect of keeping reform near the foreground.

The attitude of acquiescence in reform legislation and cost-of-living adustment to wages probably explains why the Australian patchwork of craft and industrial unions was slow to develop a central organization. Even when the Australasian Council of Trade Unions emerged in 1927 it was not representative of all the major unions. Since that date, neither a "Great Depression" nor a second "World War" has forced a real streamlining of Australian unionism.

This loose union organization has probably been of advantage to the political Party. The Party has thereby maintained a somewhat greater operational independence of the unions than would otherwise have been the case. At the same time the Party has maintained a sufficient grip on the great majority of the organized workers. In setting a reformist course, the Party has proved to be faithfully representative of most of its unionist following in the electorate.

In the context of a general union approval of parliamentary government, it is beside the point for the professed revolutionary to advance as a fundamental criticism of the Labour Party leadership that:

> "The Labour politician, ever seeking the line of least resistance, his vote-catching propensities developed to an abnormal degree, obviously is opposed, openly or secretly, to any revolutionary or even militant demands of the workers through their unions."[24]

For the contentions which are here dressed up to imply dereliction of duty in fact amount to an admission that the Labour politician is the truer representative of the bulk of the Labour electorate than the revolutionary has so far proved himself. The Labour politician, on Lane's admission, is sensitive to the electorate as a whole; he does not neglect the desires of the Labour majority for the doctrinaire demands of the minority "militants." And, on Lane's own reasoning, if the "militants" were actually succeeding in permanently converting a sufficient section of the electorate, the Labour politician would scent out that fact early and move with the first of the pack.

To dismiss Lane's indictment is not to deny that there are occupational diseases which are liable to afflict the minds of reformists. A Conservative critic has complained that "the Arbitration-system turns union officials and men into special pleaders, keenly on the lookout for the smallest chance to make a point in their favour."[25] It is true that trade unionists, particularly the officials of the craft unions, become so enmeshed in the minute day-to-day aspects of their immediate task that some appear at times almost indifferent to the general direction in which they are moving politically—or, indeed, to whether they are so much as moving at all. They are, of necessity, largely concerned with the short-term interests of their members and those who have attended meetings of certain craft unions cannot but admit that in so doing the officials are faithfully serving the wishes of most of their membership. Nor does it follow that, if they had more time at their disposal, many have the equipment to be more than special pleaders in the industrial sphere. To few of them has Australian society offered anything but rudimentary educational opportunities: and few of them in their everyday activities and contacts have the chances of broad self-education which confront the alert politician.

Cleavages between the political and industrial "wings" of the Australian Labour Movement have developed and disappeared from time to time: yet in general there has been a marked unity of thought through most sections of both. It is true that in June, 1921, the Party called a Trade Union Congress to see what the unions wanted: as E. J. Holloway said, the Party leaders felt that in that time of rapid transition they might

have lost touch. In 1942 a similar conference was called by the Labour Government. At the 1938 meeting of the Party's Federal Executive and at the 1939 Triennial Conference there was some attempt to form a Federal Labour Advisory Committee from the Federal Parliamentary Party, the Federal Executive of the Party and the Emergency Committee of the Australasian Council of Trade Unions, in order to achieve the closest liaison; but hopes were not realized. Australia remained without the equivalent of Britain's National Council of Labour.

The cleavages which have developed have usually marked a contemporaneous control of the political and industrial "machines" by opposed factions—commonly when a "militant" group has come temporarily to the head of trade union affairs. The "militants" can gain control of trade union machinery much more easily than they can the political machine. Their single-mindedness is peculiarly suited to trade union activity. They take advantage of the recurrent periods of acute discontent and unrest in the industrial movement to win office and power. The Labour Party, on the other hand, is in the nature of things more stable. In Parliament and also at State headquarters it works under the leadership of men who have served a long apprenticeship in which they have learnt to appreciate the real complexity of administering a nation.

The comparative strength of the industrial wing varies not only from time to time but from place to place. In New South Wales, where traditionally there has been most union militancy, this wing has frequently challenged and occasionally threatened to dominate the political leadership. In Western Australia, where the whole organization of the Labour Movement is calculated to minimize the distinction between political and industrial elements, New South Wales experience has not been paralleled. Actually, the predominant union in Western Australia as in Queensland (also a mining and rural-industrial State), has been the long "moderate" Australian Workers' Union which is not affiliated with the A.C.T.U.

So distinct are the political and industrial wings in New South Wales at times, and so exacting the demands upon an office-holder in either, that any leader who aspires to major roles in both simultaneously may fall between two stools and lose all. Thus "Jock" Garden, who for long had the reputation of being the "boss" of the Sydney Trades Hall, "dug a pit for himself when he essayed a parliamentary career." His city alderman-ship together with his three years in the Commonwealth Parliament loosened his grip on the Trades Hall reins. In consequence he finally lost even his seat on the Australasian Council of Trade Unions executive, of which he had been a member since its foundation, and was glad to take a position in the staff of a Commonwealth Minister.

The sixteen planks of the very first Labour Platform (1891) reflect the fundamentally unionist outlook of the Party from the beginning. Apart from opposition to Imperial Federation, compulsory military training and rating on improved values, and advocacy of Australian federation, elective magistrates, free and compulsory education, a national bank, water conservation, irrigation and land tax, the Platform was preoccupied with union matters. It sought to provide specific relief for engineers, miners, seamen and furniture workers, and relief for workers generally from various anti-labour and anti-union Acts, from several franchise and electoral disabilities, from long hours, sweating, low living standards, Asiatic labour competition, and from extra-colonial execution of contracts. Socialism was not on the Platform for three decades.

If the maintenance of the "Harvester Equivalent" in the Arbitration Court more recently has involved little increase of real wages, at least the money wages have moved comfortingly upwards. If direct real wages have only maintained themselves, indirectly social services, social security provisions, more minute supervision of working conditions and an effective limitation of working hours have together markedly advanced the real standard of living of all who can secure work. Social services and social security provisions have been extended beyond the worker himself to his wife and family.

The development of social services has focussed the workers' hopes to a greater extent on their political Party in the quest for a better life. Of the functions of the Arbitration Court judge, Mr. Justice Evatt of the High Court wrote:

> "Is it merely to award wages sufficiently high to prevent a strike but sufficiently low to prevent a lockout? Or is it within his function to improve standards of living, so that the worker will, gradually, but not too gradually, obtain an increasing share in the wealth produced?"[26]

The great majority of workers are convinced that the Court has not significantly advanced their real wage income since 1908: but at the same time they recognize that it has maintained that real income (except for the years immediately following 1931) and has improved hours and working conditions. It has, therefore, been decisively defended by the Labour Party alike from parliamentary attacks like that launched by the Bruce-Page Government in 1929 and from Communist attacks through certain unions as in December, 1945. It is to parliamentary action, however, that the rank-and-file of Labour look primarily for social and economic measures which individually or cumulatively will bring them "an increasing share in the wealth produced."

One major matter on which the Party and some of the unions have occasionally clashed is industrial strikes. These clashes are not over "the right to strike," which is an article of Labour

faith generally. In the words of a resolution submitted to the Congress of the Australasian Council of Trade Unions in July, 1928:

> "The right to strike is one of the strongest weapons in the hands of the workers in the waging of the class struggle. We desire that this Congress declare itself in agreement with the strike policy and, in spite of parliamentary legislation and court injunction declaring the strike illegal, that it will advise the trade unions to use, and will support them in the use of, the strike weapon whenever the situation and the circumstances demand them."

The magnitude of clashes between the Party and the unions over strikes depends on whether the Party is in or out of office and upon the circumstances in which the Party finds itself. Naturally enough the Party when in office can be seriously embarrassed, if not positively discomforted and even defeated at the polls, as a result of strikes which either seriously inconvenience the general public or suggest powerlessness in the Government. Equally Labour in opposition may lose its chances of crossing to the Government benches by inconveniently called strikes. There can be little doubt that strikes by waterside workers and others in 1925 and 1928 played a material part in preventing Labour victories in the general elections of those years. At other times strikes may be little or no embarrassment to the party. There can be no doubt that in May, 1916, a conference of trade unions aimed an effective blow for what was in process of becoming Labour policy when it recommended a general strike, if necessary, against conscription for overseas service.

Few unions are ever irresponsible organizations—if for no better reason than that they have much to lose, including large accumulated funds no less than advanced working standards. These factors make for a certain cautiousness in trade union executives, unless they have either a militant fire burning perpetually within them, or ulterior political motives, namely those of the Communist Party. The fact remains that the Australasian Council of Trade Unions, no less than the Labour Party, has long been pledged to constitutional and reformist methods. The influence of its leaders on the Australian Labour Party has been an influence for progressive and reformist measures. The use of the strike weapon and of other "direct action" has never, in Australia, seriously threatened parliamentary government, though it has sometimes hampered it.

If the bulk of the unions have been a moderating influence, small farmers and country townsfolk who vote Labour have in recent years been a notably sectional force in the Party, and, except perhaps in matters of monetary policy, a conservative force.

This has not always been so—it was certainly not so in the 'Nineties, the years of Henry Lawson and William Lane and Archibald's "Bulletin," when men like Spence and Holman organized the "back blocks" for unionism and for Labour.

Henry George was one of the godfathers of the Australian Labour Party. So, all unwitting and unwilling and in quite another sense, was English landlordism. Between them, these two influences, one positive and the other negative, helped to nail into the Labour Party Platform the early rural policy *planks. But local historical development had a greater influence* than either. Unlike the United States, where men kept rolling West through the 19th Century without ceasing to find new lands to cultivate, Australia found that its economic frontiers—its marginal lands—were nowhere very far inland from the coast. The lands in the coastal belt and the better watered plains were soon substantially taken up, and, long before the Labour Party emerged, the struggle of the selector with the squatters, and of the landless man with both, had produced the slogan, "Unlock the Land."

It was natural that Labour, which drew great strength in the early days from shearers, farm labourers and ex-miners who turned to farming, should have adopted the similar cry, "Break up the large estates." The devotees of Henry George, and other immigrants with old scores against English landlordism, rallied to the Party.

The cry for the breaking up of the large estates still figures in Labour policy and is apt to be shouted irrespective of technical judgments as to the optimum size of holdings for particular types of farming in particular areas. Australian Labour does not want a nation of toiling peasants. Russian experience has shown that the economic unit for certain purposes may be the collective or co-operative farm. If that is so, far from unlocking the land, Australia may really need to *build up larger units. Labour has yet to face some of these* fundamental issues of rural reconstruction: it has tended to allow its rural policy to reflect the mind of the small farmer and of the country-town shopkeeper, irrespective of the objective demands of technical and economic progress.

But from 1900 all parties have found it difficult to formulate consistent, progressive programmes for Australian rural industries. The federal division of powers, which left most aspects of rural industry to the six State parliaments, successfully hamstrung any attempts at comprehensive planning and legislation on a national scale. At all events many politicians have found it a convenient excuse for skating over the surface of many agricultural problems. It is true that with the passage of time the Commonwealth Government, from its financial and marketing responsibilities, has come to take a much more active part

in rural affairs. Yet the Federal Labour Party has developed little comprehensive rural policy. It did institute a graduated Federal Land Tax in 1910, aimed perhaps at implementing its policy of breaking up the large estates. For the rest, it has proceeded with empirical, piecemeal measures to attract the rural votes and has achieved notable successes in recent years.

The farmer, for his part, remains a conservative influence in and on the Party and its policy. He is at least suspicious of, and usually antagonistic towards, the socialist Objective, which in his eyes means Government boards and departments interfering in his every activity. The rural element, then, so far as it carries real weight in the formation of Labour policy does not bring nearer the socialist commonwealth.

One more influence must be briefly noticed.

This is the influence of the printed word on Labour policy. Early defeats and repression turned Labour men in on themselves and towards such strength as was within their circumscribed reach. Many turned to books. Spence of the Australian Workers' Union wrote that "Labour men are students of political and social science." Tom Roberts, the artist, referred to Spence himself as "a Labour man and therefore a reader." Henry Bournes Higgins, the non-Labour Attorney-General of the first Australian Labour Government (1904), spoke with some surprise of the seriousness with which pioneer Labour members of the national parliament used to meet on Sundays to read and discuss theoretical economics.

Elton Mayo wrote:

> "The Labour consciousness is the result of much study and thought—though of a narrow, and often perverted, kind. For this latter defect the rank and file of the Labour Party cannot be held to blame. For a century at least, society has been even more careless of working class minds than of working class bodies."[27]

The early Labour readers achieved a hybrid socialist theory by mingling what they read in Bellamy and Carlyle, George and Disraeli, Ruskin and Marx, Kingsley and Dickens. Their socialism tended perhaps to be bookish and doctrinaire: it did not always coalesce happily with the empiricism of the early parliamentary leaders. Yet it did bind the early Labour Movement, however loosely, to a socialist objective of sorts. On the other hand, this tendency to bookishness in generally undisciplined minds made Labour men peculiarly liable to the one-track heresies of credit-magicians and others who have distracted whole sections of the Labour Movement from the socialist goal.

This sketch of the Labour Party's theoretical position, and of the forces at work in and around the Party, reveals several important influences on the Australian parliamentary system

of government. First, the Party, never dogmatic about its methods of gradually achieving Socialism, has in practice exhibited the empirical spirit in legislation and administration traditional in parliamentary government. While constitutional difficulties have to be allowed for, the Party even seems to have been over-reluctant to try the electorate high in pursuing its declared objective. Second, insofar as a party which usually looks upon itself as socialist is in fact prepared to go on operating a capitalist community in return for concessions, that party is in a sense "in opposition" whether in or out of office. This provides an interesting comment on Lord Balfour's dictum to the effect that parliamentary government requires accord on fundamentals between the parties. Third, the presence of at least one potentially "totalitarian" influence in and around the wider Labour Movement has not proved a serious menace to the basic spirit of parliamentary democracy. That it has not proved so is due largely to the practical good sense of those able and shrewd parliamentarians who have shared the leadership of the Labour Party, and to the firm management of the leaders of the Party "machine" in each State. This is not to deny that some of the rigidities and intolerance which enter into the Party from totalitarian influences, or in reaction against these forces, have already made themselves felt in our politics. Fourth, the Trade Union movement in turning periodically to policies of "direct action" sets up frictions in the working of Australia's parliamentary democracy. Fifth, the Labour Party, in dragging concessions from capitalism or in promoting the principles of socialism, is driving all the time for a more and more "positive" State (as distinct from the 19th Century laissez-faire State). This is already requiring of Australian parliamentary government some considerable self-adjustments, which are, however, quite within the institution's capacity. The burden on individual Members, however, is greatly increased. The same trend is clearly seen in Britain. None of these influences working from within the Labour Party or its environment upon parliamentary government should be neglected or underestimated.

III

Labour's organization bears the impress of Labour's history. The Labour Party was founded in 1891. Its formation was "the outcome of the failure of the great maritime strike of 1890, when the Trade Unions, defeated and with exhausted funds, came into politics in order to use the State as a substitute for the broken weapon of the Strike.[28] The Labour Party, therefore, has from the beginning been an auxiliary of the Trade Unions and has had their machinery behind it."[29] But the 1890 strike was only the immediate cause of the Party's formation. In all States of the future Commonwealth events had turned in that direction years earlier. Trade unions had, of course, existed

for forty or fifty years. They had enjoyed for years before 1890 many of the privileges for which the British unions were still struggling years after the British Labour Party's appearance. Trade unions were fully legalized as corporate bodies in South Australia, for instance, in 1876 when they were still small and weak. In 1873 had come the eight hours day, within a year of the formation of the first society advocating its introduction. In 1887 South Australia had adopted payment of members. In most of the other States these reforms had come early, too. Regular Inter-Colonial Trade Union Conferences between 1879 and 1891 "engendered self-confidence and a sense of power," and made for uniformity of aims and methods. The Parliamentary Committee of these Conferences was the father of the Federal Labour Party.

National sentiment was early focussed around the Party for obvious reasons. Labour interests were continental in scope: the Inter-Colonial Trade Union Conferences had advertised the fact. Some unions, the Australian Workers' Union for instance, already overleapt State boundaries. The unions stood firm throughout the continent on the "White Australia" issue—and for its success that principle required such nation-wide co-operation.

In 1891, 35 Labour men were returned to the New South Wales Legislative Assembly of 144 members. Labour election successes followed in South Australia, Victoria and Queensland in 1893 and in Western Australia in 1898. In the first Commonwealth Parliament the Party held the balance of power. In 1904 a minority Labour Government held office in the Commonwealth for four months. But office was unexpected, fortuitous and of short duration. An Attorney-General (Henry Bournes Higgins) had to be sought outside the Party. "To say we were astonished at finding ourselves in office, describes our feelings very mildly. Nothing had been further from our thoughts."[30] Out of office again, Labour held the balance of power until the other two parties coalesced against Labour once-and-for-all in 1908. In 1910, in the National Parliament, Labour came not only to office but to power, with clear majorities in both Houses.

The years of holding the balance of power—from 1891 to 1908—have left a permanent mark on the organization of the Parliamentary Labour Party in Australia. Labour as Third Party was quite frank about its strategy in those years. As George Black told the New South Wales Legislative Assembly when Labour first appeared upon the scene:

> "The motto of the Labour Party is: Support in Return for Concessions. If you give us our concessions, then our votes will circulate on the Treasury benches; if you do not, then we shall withdraw our support. But we have not come to this House to make and unmake Ministries. We have come into this House to make and unmake social conditions."[31]

Labour votes were up for auction but payment had to be in Labour currency. For such a system to be effective Labour leaders had to be able to deliver the votes whenever they were "knocked down." This meant that Party discipline in the House was essential. It was, in fact, strict—sometimes it appears to have been directed contrary to true Labour interest, as when "the desire of Labour to avoid a split in the ranks on 'the fiscal issue' led imperceptibly to its acceptance of revenue tariffs which had no protective effect whatever, and even of excise and sales taxes upon necessities, casting upon the working classes an almost intolerable burden."[32] But Labour policy did become the foundation of much of the early legislation of the Commonwealth.

There was no selfish object for Labour Members themselves in this strategy. Thus for three years from 1906, twenty-five Labour men in the House of Representatives maintained in office Deakin and his party of eighteen—"Such a condition had no precedent in the history of constitutional government. The Labour men asked for no personal gain but insisted upon the carrying of the Party programme."[33] This was strictly in accord with the Party's declared opposition to coalitions or mergers. It was in accord with the 1905 Conference resolution:

> "That neither Federal nor State Labour Parties should in future enter into any alliance extending beyond the life of the then existing Parliaments, nor grant nor promise immunity from opposition at election-time."[34]

Throughout those years it was Labour that was responsible for the tempo and the direction of social legislation. Those were probably the days of Labour's greatest active strength in the electorates, the days of most vigorous life in the leagues and the branches. Those were the days when trade union meetings were well attended in most industries, rather than in a few; when Australian Natives' Association debates and gatherings drew crowds; when people of all classes still came eagerly and frequently to hear serious speakers on political subjects. As a climax to the period came the Fisher Government of 1910-13 which in a sense marks Labour's "Golden Age"—insofar as that is to be found in the past. By 1912 the Party felt justified in claiming, despite the 1911 Referendum defeat, that:

> "So great has been the progress in the national Parliament that the greater part of the platform constructed at the Brisbane Conference (1908) has been made law and placed upon the Statute Book of the Commonwealth. And so it is necessary that the Conference should make some advance in the direction of our objective by adding fresh planks to the platform in place of those accomplished. We have been able to place to credit, as planks made law, six important items, which in themselves are enough to make all followers of the movement feel a thrill of satisfaction at what has been done."[35]

Labour had found that it could fulfil with credit and profit the leadership of the Australian Parliament. Appropriately, 1912 marked Labour's parliamentary coming-of-age.

The pattern of the Labour Party machine varies to some extent from State to State. Thus in Western Australia there is formally less distinction between the political and industrial wings of Labour, while in the Eastern States—notably in New South Wales—it has not been altogether unusual to find the political and industrial wings at loggerheads, each standing upon its distinct ground.

> "In New South Wales it is known that the variance between the political organization and the control of the Labour Council, and its organization, is not of recent date, but has been in existence for many years.... I want you to follow that the organization in New South Wales, industrially and politically, is widely separated. From the standpoint of political control and power and organization work, we have to depend upon political branches. Without those we would have no effective machinery to carry out the work. Some unions do work for the political machine while others do not. We say that they fight the political fights, police the booths, collect the postal votes, etc., and consequently we feel they are due for proper representation at the Conferences."[36]

The financial support given by the unions to political Labour also varies very considerably from State to State, but nowhere seems to approach the support which the New Zealand waterside workers' union alone gave New Zealand political Labour in the 1930's.[37] In Victoria the income of the Labour Party in the 1930's was somewhere between £3,000–£3,500, to which must be added occasional presents and donations, and, in election years, an election levy. In New South Wales Labour probably relied more on donations to party funds than did Victoria. In 1940 the South Australian State Secretary complained that the Party headquarters there had had only £400–£450 with which to fight the federal elections, and that ten big unions had made no contribution whatever. The Federal Labour Party Executive has about £1,500 a year for expenses and propaganda if all State Executives pay their full subscription of a penny per member.[38] (At election-time a public appeal has sometimes been made to supplement this income.) This Federal fund is administered by four Trustees.[39] From time to time impoverished State machines have had to receive aid from Federal Party funds.

The Labour machine has as its supreme organ the annual Australian Labour Party Conference or Convention (in each State), surmounted by the triennial Australian Labour Party Federal Conference with six delegates from each State attending, between whose meetings power lies with a Federal Executive. The Federal Executive (created in 1915) consists of two

representatives from each State. In the States the State Executive is constituted in various ways. In Queensland, the Central Executive is made up of 24 delegates elected by affiliated unions, 11 delegates elected by ballot by the annual Convention, and one delegate each from the Federal and State Parliamentary Labour Parties. But this Executive is so large that in practice most of its work is done by an Executive Committee. In New South Wales, on the other hand, though the Central Executive also consists of 37 members, they are all elected by the annual Conference.

The relation of Executive to Conference is as follows:

> "Convention draws up the Constitution and the rules of the Party; it builds the Platform of the Party, establishes the principles of the Party, and visualizes the objective of the Party, and having done these things, it directs that an Executive shall be set up whose job it shall be to govern the Party in between the Conventions, stipulating that all things shall be done in conformity with the Constitution, the Rules, the Platform, the principles and the spirit of the Movement."[40]

The all-powerful Conference or Convention, or its Executive, has the final say in endorsing candidates chosen by Electorate Councils or electorate ballots to stand as official and endorsed Labour candidates for Parliament. In some cases in particular States pre-selection has actually been by State Conferences. For a party member to stand against an endorsed party candidate is to incur expulsion from the Party.

State Executives have in some cases attempted to direct Labour Members of the Commonwealth Parliament who came from their particular State to vote in a certain way in Caucus and in Parliament, on pain of losing official endorsement at the subsequent general election. To counter this State interference with Members, the Federal Executive in 1935 resolved that no State Executive could issue instructions to a Federal Labour Member on a matter of Federal policy.[41]

Just as pressure has in the past been exerted by State Executives on Federal Members of Parliament, so conversely during the conscription campaign of 1916 W. M. Hughes tried to exert pressure on State Executives in favour of his side in the split.[42] All State Executives rejected his advances, thus confirming his isolation from general Party opinion.

Since the 1914–18 war Australians have come to understand the essentially democratic nature of the pledge which each Labour candidate signs. They have also accepted its permanent place in Labour politics. In consequence the old controversies over it have died down. But because of its place in Party organization and its effect upon parliamentary government, it is necessary briefly to examine its history.

The pledge goes back to the days of the first New South Wales Parliament to which Labour men went as a party. It was perhaps inspired by a similar practice among the "Parnellites" in the British Parliament. As a third party, seeking successfully to exploit its tactic of "Support-in-return-for-Concessions," Labour had always to be in a position to deliver the full quota of Labour votes to the higher bidding party. So it was that George Black won most of the Labour Members to sign the first pledge:

> "That in order to secure the solidarity of the Labour Party, only those will be allowed to assist at its private deliberations who are pledged to vote in the House as a majority of the Party sitting in Caucus has determined. Therefore we, the undersigned, in proof of our determination to vote as a majority of the Party may agree, on all occasions considered of such importance as to necessitate a Party deliberation, have thereunto affixed our names."[43]

Then at the 1893 New South Wales Labour Party Conference, W. A. Holman moved:

> "(A) That a Parliamentary Labour Party to be of any weight must give a solid vote in the House upon all questions—affecting the Labour Party, the fate of the Ministry, or calculated to establish a monopoly or to confer further privileges on the already privileged classes—as they arise; and
>
> (B) That accordingly every candidate who runs in the Labour interest should be required to pledge himself not only to the fighting platform and the Labour platform, but also to vote on every occasion specified in Clause (A) as the majority of the Parliamentary Labour Party may in Caucus decide."[44]

To-day the Labour candidate pledges himself in the following terms:

> "I hereby pledge myself not to oppose any selected and endorsed candidate of the Australian Labour Party. I also pledge myself, if returned to Parliament, on all occasions to do my utmost to ensure the carrying out of the principles embodied in the Labour Platform, and on all such questions, especially on questions affecting the fate of a Government, to vote as a majority of the Labour Party may decide at a Caucus meeting. I further pledge myself not to retire from the contest without the consent of the Executive of the Australian Labour Party. I also pledge myself to actively support and advocate at all times the Party's objective—the Socialization of Industry, Production, Distribution and Exchange."[45]

Thus the Labour Party's changed status—from third party with the balance of power, to one of (in effect) two parties, either in office or official opposition—has made little difference to the form or importance of the pledge. For, whether one of two or three parties, Labour has always been in the same position of seeking to breach the positions of powerful vested and privileged economic and social interests. To get results it must insist on reliable support from its Members of Parliament. As long as decision-taking, whether at Conference or in Caucus, is a

democratic process, involving prior discussion, the Federal Party is unlikely to suffer from machine control (which is more probable in the narrower State sphere) or the stifling of the faculty of independent individual judgment in its Members. In the parliamentary "warfare" itself there is room only for a solid front—not for the airing of domestic issues—in the face of the "enemy."

Many years ago it was suggested that signed, undated resignations from their parliamentary seats should be required of candidates—to be dated and forwarded to the Speaker (or President of the Upper House) by the Party in the event of breaches of the pledge. But this never became the practice, though the parallel electoral principles of "Initiative, Referendum and Recall" remain among the nominal aims of Labour, a survival from pre-1914 days. Rather, sanctions were left in the hands of those with power to give or withhold endorsement for the next elections—the rank and file or those to whom they delegate such power. Thus in 1941, when Maurice Blackburn was expelled from the Party by the Victorian Executive, he did not lose his parliamentary seat forthwith. But as an expelled member he lost eligibility for endorsement as official Australian Labour Party candidate for Bourke at the next general election, unless reinstated in the Party in the meantime. In most electorates, and in the cases of most individuals, loss of endorsement is tantamount to loss of any real chance of election. But the Party as a whole and its Executive in particular fully appreciate that they must be able to count on local Party branches not to support a Member who has forfeited endorsement.

> "Unless you can turn the member out who defaults, it is no good trying to bind him. The man who votes against the majority of his party is not likely to do so unless he feels sure that his constituents are with him, hence that he will not be turned out by them. What we need, then, is active, well-organized leagues in each constituency, and then there will be no traitors."[46]

This whole principle of party solidarity—basically, of class solidarity—backed by the pledge and sanctions was a significant departure from the particular idea of representative government which finds its classical definition in Edmund Burke's "Speech to the Electors of Bristol"—a conception altogether too aristocratic, as expressed by Burke, for the present time and age. Labour has never made anything but frank affirmation of this fact.

A Labour Member of Parliament is selected by the Party and returned by its supporters to do his utmost to implement the programme laid down and approved by the Party Conference of democratically-elected branch delegates. The rank and file of the Party is thus ultimately sovereign and Members are to the extent that the programme is defined, its volunteer agents.

Those who vote Labour are aware of the Party's constitution, or could be for the asking—or the reading. They are similarly aware of the Party platform and the fact that the Labour candidate is pledged to implement it and to vote as the majority of Caucus lays down. These facts are all public knowledge.

The Labour caucus organization in Australia persisted and succeeded where in England the contemporary designs of Joseph Chamberlain (Liberal) and of Randolph Churchill (Tory) melted away. As will be seen below, these caucus principles were something of an innovation in parliamentary government. Even some Labour stalwarts could not reconcile themselves to them when they first emerged. Amongst others a future Prime Minister of the Commonwealth, Joseph Cook, left the Party for the camp of the parliamentary enemy, complaining that:

> "The pledge destroys the representative character of a Member and abrogates the electoral privileges of a constituency."[47]

To the charge of being enslaved, Labour Members had a ready answer:

> "Will our critics, who accuse us of not being free men, tell us by what we are bound, save by our own word, freely given? If we believe in certain principles, ought we not to do what we can to give effect to them? And if we are not ashamed but rather glory in our cause, why should we not openly testify to its virtues and solemnly pledge ourselves to stand by it? Do we cease to be free men because we earnestly advocate certain principles which we believe to be essential to the social and industrial salvation of mankind? Or because we pledge ourselves to do that which we declare above all other things ought to be done and must be done if the people are to be economically saved?"[48]

And on another occasion W. M. Hughes swept aside the charge of repression of individual will as something which did not arise:

> "The repression of individual will involved does not concern us, because no one is bound to come into the Movement or forced to remain in it."[49]

In 1915, for instance, Frank Anstey, fully appreciating the basis of party membership, and his own obligation not to speak publicly in opposition to settled Labour policy, left the Party in order to criticise what he conceived to be its preoccupation with "militarism."[50] He subsequently rejoined the Party and died one of its honoured veterans. Prior to leaving the Party for that purpose, Anstey and others who shared his views had maintained a loyal silence:

> "Not only has no section of the Labour Party in Australia, Commonwealth or State, taken up a position of hostility to the prevailing sentiment throughout the country, but not a single Labour politician or Trade Unionist leader has—publicly, at all events—adopted an attitude of opposition or even detachment in connection with the steps which Australia has deemed it necessary to take in the interests of the Empire and for the protection of her own shores."[51]

The fact remains that prior to 1914 there was great criticism of the caucus principle and the pledge from non-Labour directions. George Reid referred to Caucus as "that ambitious and despotic organization which achieved so much."[52] Forrest quoted Deakin as saying of Labour that "it compels a minority to vote against judgment and against conscience, and threatens the independence of its members, and is dangerous to the community."[53] But Henry Bournes Higgins, the only non-Labour man to have had even a short experience inside a Labour Cabinet, said after four months in the 1904 Labour Government that he had never felt the pressure of Caucus.

W. G. Spence has left an account of how Caucus worked in those first eight years of the Commonwealth Parliament when Labour, as third party, held the balance of power:

> "The party meets every Wednesday morning. On measures affecting the platform the party votes are solidly together. On all other questions each member is absolutely free to vote as he likes. All important bills, whether affecting the platform or not, are discussed and in most cases remitted to a committee of the party, who go through the measure and recommend amendments. The Leader would then take these amendments, if approved by caucus of the party, to the Minister in charge of the Bill. Many would be accepted, others would be left to the House to decide. This method helped to improve legislation and justified the claim that the party wielded an influence far greater than its numbers warranted. No other party worked so hard or so efficiently; hence the good done. The relations with the Government were open and above-board; the Cabinet readily considered any suggestions made by the party."[54]

When Labour became, in 1909, one of two parties in the House, a Caucus decision was followed by no such negotiation with another Party—every decision then was translated into a vote in the House at the appropriate division.

The Labour leaders who parted company with the Party over the Conscription issue in 1916—notably Hughes, then Prime Minister; W. G. Spence, then Minister; and Holman, then Premier of New South Wales—had all previously been enthusiastic supporters of the "pledge" and of caucus and rank-and-file control. Hughes and Holman have already been quoted on the subject. If that were not enough, here is another pronouncement by Hughes:

> "During the whole time I have been in Parliament, covering the entire period of the Solidarity Labour Party's existence, no league or union has ever dictated to me as to how I should vote. In fourteen years I cannot recall half-a-dozen occasions upon which the Labour League, which has done me the honour to select me as its representative to contest every election, has written me in respect to prospective legislation."[55]

When, therefore, these men, as leaders of the country, clashed with Caucus and were "politically incinerated by their own

contrivance,"[56] the people rightly discounted their new-found criticisms of Caucus and the Pledge. It was too late for Hughes to turn round to complain that:

> "The official Labour Party is no longer master of its own actions. It is a mere pawn in the hands of outside bodies. It does what it is told to do. If a member dares to murmur, to speak as he thinks.... he lives with the sword of excommunication suspended over his head."[57]

The Labour rank-and-file were able to talk as Hughes and Holman had talked in their early days:

> "Premier Holman does not hold the fate of Labour in the hollow of his hand. He is not its Leader, to turn it this way or that way as he chooses. He is Labour's servant, and his Government is Labour's servant, and if they have not sufficient humility to glory in rendering service to Labour, if, in an excess of self-esteem, they seek to exercise the power of masters over Labour, then the sooner the situation is defined the better for all concerned.... Premier Holman has been put at the head of a Labour Government to consummate the will of the *Labour Movement and not to act upon his personal judgement.*"[58]

Such an attitude can, of course, be carried much too far, as when the same journal wrote of the Labour Movement:

> "It represents a phase of evolution infinitely in advance of the days when the workers had to be 'led'. They have no use for leaders. In conference assembled, they formulate their policies and decide their tactics. In mutual associations they select their candidates and conduct their campaigns."[59]

This is as extravagant in one direction as the statement of a New South Wales Labour Minister in a later State Cabinet was in another when he said:

> "The Cabinet has one leader, who announces its policy. When he announces it, we follow, and as soon as he announces it, we know where we stand. We do not seek to know what he is going to do, and are prepared to surrender our judgment, if necessary, in advance."[60]

The criticisms of the Caucus and Conference control of Labour policy have been many. Amongst them we may list the following. The pledge to vote as the majority of Caucus decides leads to a waning of regard for personal principles. The system is apt to lead to the formation of a caucus within Caucus. It discourages brilliance and originality, the exceptional man tending to be always suspect. Caucus and Conference are apt to be impatient with the Ministers' difficulties—frequently out of ignorance of those difficulties. Parliament may be committed by a narrow majority of Caucus to a policy to which a majority of Parliament is opposed. Since Labour Senators sit in Caucus, the policy of the House of Representatives may really be determined by men not members of that House. Caucus itself is bound by an outside body—the Triennial Federal Conference of the Party and its Executive.

But Labour has answers to all these objections. As a freely pledged man, a Labour Member should not find it contrary to his principles to vote for measures in accord with the Platform or in defence of a Labour Government. It is true that groups may appear within Caucus, but this is true of any body of men and women. This is not peculiar to the Labour Caucus. (In instances like O'Malley's campaign for the Commonwealth Bank, these groups usually reflected strong outside rank-and-file opinion.[61]) As to the discouragement of brilliance and originality, Caucus has occasionally chosen as Ministers men less gifted than others available, but it has often done so with other weighty and revelant considerations of character and judgment in mind. The fates of the Rt. Hon. R. G. Menzies at the hands of the anti-Labour Parties in 1941, and of Mr. Hughes in 1923, seem to show that suspicion of the exceptional man may be a general political failing rather than a peculiar quality of the Labour Caucus, even if it does exist in Caucus. Caucus is apt to be impatient at times with Ministers, but once Ministers' difficulties have been explained to it, Caucus has almost unexceptionally given patient and loyal support to the Ministers in the face of outside critics. It is in the interest of Labour that Caucus should when necessary be critical of Ministers' doings rather than that Caucus should be a body of "Yes-men." As for the complaint that the Caucus tail wags the Front Bench dog, it is very far from being the truth. If Labour has been returned as a majority to Parliament, it has to implement Labour policy as the Platform declares it, or, in vital matters on which the Platform is silent, as a majority of Labour Members decides. If a Labour Member is loyal to the party principles of majority rule, he goes into the House prepared in the Party interest to vote as a majority of his Caucus colleagues decides. As often as not he will himself be part of the Caucus majority. In the extreme case, if he fervently believes they are wrong, or that Labour policy is wrong, he can abstain or vote with the anti-Labour parties and leave it to his Party to decide whether it is prepared to entertain his continued membership.

The Caucus system is not a negation of the democratic parliamentary system. Soundly and properly used, it has become an integral part of Australian parliamentary life. It has been largely adopted by anti-Labour. Parliamentary government cannot be at once stable and progressive without some degree of party cohesion and discipline. Better that the great decisions in national politics should be taken by a known, elected and accountable body of men than by unknown and irresponsible outside cliques like those which have from time to time decided or greatly influenced the policies of some Australian parties.[62] So long as Caucus discussion and criticism is free and unhindered it constitutes another tempering agency in the demo-

cratic process, another barrier against the substitution of virtual plebiscitary dictatorship for parliamentary government.

Caucus deliberations are essentially regular private meetings of Party Members. No one else is present. A member of the Parliamentary Party is Secretary of Caucus. Secrecy is the formal rule. In fact, Caucus business is all too frequently revealed to the public ear—either by malcontents against whom Caucus decisions have gone, or by indiscreet members who fall prey to the "pumping" of the experienced parliamentary pressman. In either case, the Party's interests tend to suffer.

Not that breaches of Caucus secrecy are confined to the Labour Party. If anything, more anti-Labour internal strife has in recent years been given publicity after party meetings than has occurred in Labour's case. Just how unfortunate this can be is clear from a case which occurred during the Representatives' debate on Labour's 1941 Budget. The anti-Labour party met early on the day when the Leader of the Opposition was to resume the Budget debate. Its proceedings were noised abroad in the lobbies. As a result the Prime Minister apparently knew beforehand in some detail the principal arguments which were advanced in the House by the Leader of the Opposition. In consequence he was able to make a devastating point-to-point reply, which had additional force in that it was, to all outward appearances, entirely extempore.[63]

The greatest sin which a Labour Member of Parliament can commit is to "rat." "Ratting" is the process of deserting one's party to join its opponents. It is thus the equivalent in the political wing of Labour to "scabbing" in the industrial wing—"scabbing" being a failure to act upon a majority decision of one's union, more particularly in the event of a decision to strike. These two failings stand at the opposite pole from the Labour virtue of solidarity. They stand thus at the extremity of the catalogue of sins because a party of the poor and relatively under-privileged must rely on the effective marshalling of numbers to prevail against established wealth and power and privilege. Labour is not sparing, therefore, of those who fail in loyalty.

These desertions date back to the beginnings of the Party. Ever since, it has been the experience of the Party that:

> "Once or twice in a generation, under the influence of some great temptation or some malignant but powerful personality, men, taking courage from their numbers, act in concert and go over to the enemy."[64]

Those words were written, almost prophetically, by W. M. Hughes eight years before he himself, from the highest place to which the Labour Party could raise any Australian, the Prime Ministership, chose to walk into the camp of the enemy rather than bow to the contrary opinions of Caucus and the Party in

the country. In forming a Government early in 1917 with the anti-Labour elements in the National Parliament, he dealt Australian Labour the severest blow it has ever received. In the ensuing quarter of a century Labour was never again in power and only once, for two years, in office.

The reasons why Labour men desert are mainly three. First, they may sincerely conclude in their own minds that they can no longer subscribe to the Party platform or procedures. They therefore decide to leave the Party, but, since they still wish to be active in public life, they join the other Parties in Parliament. Sometimes they may attempt to continue as Independents. Neither path is easy.

> "It is a terrible thing for a Labour politician to set himself against the machine. In the first place the chances are that his rebellion will fail; instead of breaking the machine he will be broken by it; instead of a 'split' there will be a 'purge'. The rebel is gambling with his career and the odds are against him. Moreover, he is breaking an ingrained habit of obedience, violating a solemn pledge, renouncing old comrades and loyalties. Nothing but the most intense conviction, or the most insistent necessity, will drive him to mutiny."[65]

The second reason why a Labour man may depart is the most discreditable of all—he may be "bought." There are apparently always those who will willingly "buy" an able and vigorous (therefore a "dangerous") Labour man—or a Labour man whose journey across the floor of Parliament will bring down a Labour Government. And Labour men, if their convictions and loyalties are not firm, are often in a situation where monetary temptation will prove great, for Labour men are customarily men of little income or property beyond their parliamentary allowance. It is thus not without significance that in 1941 the new Labour Premier of New South Wales, who had had experience in a previous State Labour Cabinet, was reported to have appealed to his Ministers "not to be tempted to take one penny outside their Ministerial salaries." He went on:

> "The Government has been returned with one of the greatest majorities in political history. As Ministers you have the confidence and goodwill of a people who have placed their trust in me and in the Labour Party of this State. I ask you to do nothing that would undermine and destroy the confidence of the public or besmirch the reputation of my Government. Your salaries are sufficient for your requirements."[66]

In the federal sphere there have been occasional allegations of "selling-out" to the "enemy." Thus the whole of the circumstances in which the realignment of party forces occurred in February–March, 1917, caused unpleasant speculation.[67] In the debates at the time Senator D. Watson, for instance, told of the pressure put on him to desert to W. M. Hughes' new composite party and so to assist it to a Senate majority. Watson

said that Senators Givens and George Pearce had successively attempted to persuade him to leave his Party. He was then summoned by the Prime Minister, Hughes, who opened the interview by asking what prevented him coming over to the "Nationalists":

> "I replied, 'The Labour Movement'. He said, 'Why more you than myself, Chris. Watson, George Pearce, and others who are equally attached to the Labour Movement?' I said I could not discriminate in that way as it was within their rights to act as they thought fit. They had been resting for many years in the lap of the Labour Movement, and had seen many years of public service; whilst I stood at the threshold of my public career. He asked me did money stand in my way, as I would lose nothing by coming over to them, and stated that he had never deserted any man who had stood to him. I replied that I had too much regard for the Movement to act in any way in opposition to its interests or betray its confidence. I said, 'What would the men of Newcastle think of me were I to do anything contrary to the wishes of the party to which I belong?' He said, 'If you don't like to live in Newcastle, we can find you another place'.... I replied, 'Oh. I could not think of that.' He then suggested I should resign my seat and allow the vacancy to be filled, promising that a position should be found for me. I stated that I could not think of deserting the Movement, and leave my mates in such a crisis, as I had always tried to act straight forwardly, and be able to look my associates in the face.... 'I could never scab on my mates'."[68]

The third principal reason why Labour men have deserted their Party—the most complex of the three—lies in the gaps which almost inevitably develop between the Labour-man-become-Minister and the rank-and-file of Caucus and of the Party in the electorate. The Minister becomes engulfed in his new job, his time is not his own, he moves, however temporarily, into a new income-group, his whole surroundings are new—no longer those of his pre-Ministerial days. He becomes "painfully aware of the limitations placed upon his power by consideration of finance, by constitutional usage, by the traditional procedure of his department, and by the very multiplicity of conflicting claims upon his favour."[69] He comes to be, at first subconsciously, then perhaps all too consciously, on the defensive. However well-meaning he may be, the rank-and-file feel, or imagine they feel, the subtle overtones and undertones of a changing relationship. Some of the rank-and-file show their feelings—feelings often aggravated by disappointment that Caucus had not chosen otherwise in electing the Ministers.[70] An individual Minister finds himself instinctively drawn by fellow-feeling and common lot towards the other Ministers for mutual support and collective defence against any hostility, impatience or criticism which comes up from the ranks. This situation in which a Minister finds himself is experienced in an

even more acute form by a Labour Prime Minister, the embodiment of the collective leadership, the spokesman for Cabinet and the custodian of the prestige of the Ministry. The rank-and-file in its more sober moments recognizes the tension in these relationships. Thus a majority of Federal Conference in 1919 firmly rejected the suggestion that five Members should be set to watch each Minister and, in effect, to share his responsibility. For they saw that Cabinet Government would become impossible under such conditions.

But in moments of great stress, of danger or adversity, or in the cases of over-masterful men who have climbed to power on the shoulders of Labour only to chafe at the obligations which Labour asks of its leaders, gaps between leaders and men have been apt to become yawning chasms.

> "In all such cases, however, there is a legitimate element of criticism of the movement by the leader. The movement itself is too hasty in its judgment, too ready to excuse its own failings by blaming the leader, and too apathetic to avoid mistakes by prolonged discussion and discipline. The movement too easily blames the lost leader to avoid analyzing its own weakness."[71]

Such appear to be the tangled elements behind the process of desertion which has lost to the Labour Party many who rose by its goodwill and its sacrifices and its loyalty as much as (sometimes more than) by their own native ability. Apostasy is a one-way traffic. A party which places this at the head of its list of mortal sins is not likely to welcome those who have sinned in the same way against anti-Labour. Labour holds that *there is no place for the unreliable of any party in Labour's* ranks. So Labour has nothing to balance against the defections of Prime Minister Hughes and Premiers Holman and Hill, or Cook and Lyons who became Prime Ministers subsequently, or Tom Glassey or Trenwith, George Pearce or W. G. Spence, save the knowledge that none of them was indispensable and that the party lived on. This phenomenon of "ratting" by Labour men, irrespective of whether particular men were more sinned against than sinning, has been a recurrent feature of Australian parliamentary life: it is at once cause and symptom of much that is distinctive in the Australian development of parliamentary institutions: history suggests that it is a contingency never entirely to be discounted in surveying the parliamentary scene.

Parliamentary life in a democracy is far removed from court life in the days of chivalry. In Labour politics honours fall, not to your knight in shining armour, but to the popular and experienced party man who has served a thorough and faithful apprenticeship. Parliamentary life itself performs a selective function. The exacting routine of parliamentary processes is

rarely a happy hunting ground for shining knights. It rarely suits men of that temperament. It calls for too much hard, level-headed work; it calls for very little glamour.

The list of Australian Labour's federal leaders reveals a succession of solid, honest, faithful, conscientious and able men. None, with one possible exception, was brilliant; one or two could perhaps fairly be described as distinguished. In each, the practical man had firm control over the idealist. In each, the capacity to conciliate and to work a mixed team was apparent. In a party as given to factions as is the party of reform in any country, this capacity to conciliate and manage was indispensable. It is hard to believe that all Labour's leaders were fundamentally socialists, except on the broadest definition of the term. One or two were inclined to be vain and jealous of powerful colleagues: but not to any fatal extent. Though each was duly chosen and acclaimed, not every one possessed the full range of qualities necessary in a national leader. Not all of them, of course, had occasion or opportunity to develop their qualities of national leadership. Watson was Prime Minister for only four months; when Labour came to office again he had assumed the role of elder statesman. Tudor and Charlton led the Party in the decade after the Conscription split: each handed over without achieving the Prime Ministership.

A brilliant crusading socialist, even if he maintained his ardour and his socialist zeal keen and bright through a testing parliamentary apprenticeship, would probably prove temperamentally incapable of that side of leadership which is vital to the holding of Labour together, in and out of Parliament. The need for special qualities of patience and conciliation arises in part from the fact that he must contrive to maintain his leadership not only in Cabinet, Parliament and the country but in Caucus, too; and of the four Caucus is often the most troublesome and exacting. Centrifugal forces are present in all political parties—what are often taken as "limitations and equivocations" in a leader are frequently "not the immediate product of his naturally honest mind, but the dubious, deliberately-fashioned devices of a leader who has to satisfy an army which carries several mutually exclusive standards."[72] Labour has, once or twice, realized the need for and the value of some sort of a knight in shining armour. At the time of the 1919 elections the then leader of the Party, Tudor, was of little standing outside Victoria. "A change was made, therefore, in the leadership by the appointment of Mr. Ryan, then Premier of Queensland, to the novel office of campaign director, so that Mr. Tudor retained his dignity while losing his importance."[73] Ryan, though not perhaps strongly socialist, was fresh from his leadership of the opposition to W. M. Hughes' wartime "autocracy."

The exception amongst Labour leaders is William Morris Hughes. That Hughes was for long a faithful Labour man is undoubted. That he was organizationally creative and tactically often brilliant is unquestioned. That he was a sincere reforming socialist in his Labour days cannot be questioned—his "Case for Labour" is still the classic statement of the Party's faith. That he always had enemies in the Party is true: that is the lot of any brilliant and ambitious man. His undoing in the Party which above all others prided itself on the democratic nature of its Conference and Caucus rule was his autocratic temperament. He had no inclination, and (especially in the midst of war) little time for making a regular formal obeisance to the rank-and-file. Even that might not have been fatal. His downfall was rather that he made no attempt to conceal his attitude but rather spoke it out loud and bold. As one non-Labour critic wrote:

> "What one does miss in Mr. Hughes is the true democratic temper or the true Liberal doctrine. Though efficient and tolerant he is nevertheless an autocrat. This trait crops up continuously. He amused everybody at the Lord Mayor's Dinner recently by saying that the war would be won by the very few in authority and not by the many-headed rabble. One feels that Mr. Hughes is leading a Labour Party somewhat by accident, that had circumstances been different he might have been leading another section of the community."[74]

The time had, indeed, long passed when Edmund Burke could coldly tell the electors of Bristol that while he appreciated their confidence in him he must keep them firmly at arm's length while he thought out for himself the speeches and votes he would deliver as their representative. For Hughes to refer to the rank-and-file as the "many-headed rabble" so soon after the Sydney "Worker" had served notice on Premier Holman that Labour had no longer to be led and indeed had no use for leaders, was to court trouble. Retribution followed swiftly and the most remarkable man who has ever led Federal Labour justified the premonition of the critic who felt he might well be leading "another section of the community."

Labour leadership is very much handicapped by the traditional Australian Labour suspicion of the intellectual and the expert. For that attitude of distrust has meant that Labour has not had a body of economic and other experts of its own to whom, in and out of office, it could confidently and regularly turn for informed advice. This puts a great strain on Labour Ministers and particularly on Labour Prime Ministers, though the period of office from 1941 probably marks a turning point in this matter. Whether reliable expert advice will be available to Labour in Opposition in the future is, however, still a moot point. This lack of intellectual and expert strength affects the whole Party, in and out of Parliament, and not merely its

leadership. In its more self-analytical, clear-sighted moments the Party sees this deficiency. At the 1921 Brisbane Conference of the Federal Party, for instance, the adopted platform contained not only the plank:

> "Government of nationalized industry by boards upon which the workers in the industries and in the community shall be represented."

but also the corollary:

> "The setting up of Labour research and Labour information bureaus and of Labour educational institutions in which the workers shall be trained in the management of nationalized industries."

In 1937, after a visiting English economist had materially assisted in an Arbitration Court victory, there was some talk in trade union and Labour circles about spending £1,000 a year on an economic adviser. But it would seem that such suggestions do not have deep roots in Labour convictions. They are made and little or nothing comes of them. Such a negative attitude on the part of the Party in this matter reduces its capacity to attract and hold that considerable body of scientists, administrators, and middle-class technicians who have to be convinced to be won. There is an intelligent as well as an unintelligent floating vote; Labour seldom wins the former by its intellectual appeal, though it sometimes wins it by default on the part of anti-Labour.

The well-educated and well-read man who is attracted to the Party complains that he finds himself among fellow party members whom, usually through little fault of their own, he feels to be at once ignorant and unappreciative—even openly sceptical and scornful—of the heritage into which he has had an entry. Over a period this difficulty often disheartens the "intellectual" whose natural sympathies are with Labour.

For some of these deficiencies the arbitration system is sometimes blamed:

> "I think the worker would be better off if he benefited himself more directly. I feel that the element of legalism which is characteristic of Australian labour conditions is demoralizing to the union movement and the self-organization of the workers. They do not think out their economic problems as they are forced to do in other countries."[75]

Perhaps more deeply responsible would be the national characteristic of "anti-intellectualism" which quite transcends party lines. At all events the result is apparent to the visitor and the Australian critic alike:

> "Labour ideals are not clearly defined. The Labour movement, in contrast to the English movement, has almost no intellectuals prominent in the Party to formulate a definite philosophy. Australian Labour leaders have been suspicious of intellectuals and have not encouraged them to join the movement."[76]

That was the comment of an observer who had watched Labour in the face of unparalleled depression. He is in agreement with a critic who was watching Labour face to face with post-war (1920) problems:

> "The Party, moreover, has done no political thinking for ten years. It has been a party of political manoeuvre only; all the intellectual socialists and radicals are in revolt against it; it is a highly organized machine, which means that a long apprenticeship must be served, and much log-rolling take place, before a man has a chance of selection. Thus the personnel of the Labour Party has become deplorable."[77]

These faults are not to be remedied by simply setting up some "Central Socialization Committee" to hand out socialist propaganda, as the 1930 Conference of the New South Wales Labour Party did, though that may be better than nothing. What seems to be required is, first, a change of Labour attitude to the sincere intellectual and expert, and, secondly, heed to the words of one of the most influential of British Labour intellectuals:

> "There is and there can be no valid substitute for the inspired and understanding keenness of a nucleus of real socialists as the driving force behind the machine.... It is indispensable to avoid the appearance of setting up in any sense as rivals to the Party, either in the field of organization or in that of programme-making.... The only kind of Socialist-making body which can do its job properly under present conditions is one in which membership is regarded as a privilege and a serious obligation."[78]

The relevance of all this criticism for the Australian Federal Parliamentary Labour Party is readily apparent to any reader of the collections of documents covering the economic crisis of 1930-32 made by Shann, Copland and Janes. From those documents it is quite plain that even the ablest of the Labour Government leaders were confused, uncertain, and sometimes baffled in the face of that catastrophe. They lacked at once the experience and the expert advice from men with their own sympathies with which to stand up to the interpretations of events and suggestions of ways and means given them by bankers, non-Labour economists and public servants who in reality were at that time almost as confused and ignorant as they were themselves of many of the possibilities in the situation.

This does not mean that experts and intellectuals invariably have the answer to every problem confronting Labour. But they are most necessary contributors to the answers, if only to the extent of clarifying issues and implications. And whether inside or in the following of the Parliamentary Party they can be an invaluable leavening and stimulus. To take but one instance, the hand of the British Labour Party has in the past been strengthened by the Haldane Society (a group of socialist lawyers) which drafted Bills while Labour was still in opposition, for private discussion by the Party, for the education of

Labour Members and, where desirable, for propaganda purposes.[79] The contribution of the Fabian Society to the British Labour Party is even better known. Without such bodies of technically competent advisers in several fields the Australian Labour Party, in or out of office, will be unequal to the many complexities of modern social and economic organization. Whether capitalism is being demolished or socialism built, something more is required than marching seven times around the walls or foundations and shouting. A parliamentary party needs more behind it than division majorities. There must be intellectual as well as campaigning zest as a basis for achieving and utilizing power.

CHAPTER IV

THE PARTIES OF TOWN AND COUNTRY CAPITAL

> "The most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors and those who are debtors, fall under a like discrimination. A landed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of government."
>
> *James Madison.*

> "The essence of Liberalism is to distinguish between essential liberties, to be preserved at all costs, and lesser liberties, which should be preserved only so far as they are consistent with social justice and social progress."
>
> *Sir William Beveridge.*

I

WATCHING the alternation in office of Liberals and Conservatives in the days before Labour appeared in the British Parliament, Karl Marx concluded that, whichever way the pendulum swung, "the executive of the modern State is but a committee for managing the common affairs of the bourgeoisie." In Australia the anti-Labour parties are, first and foremost, the political organizations of the active controllers and often passive owners of private capital, rural as well as urban. There is, of course, not always a clear line of demarcation between owners and controllers, though substantial divorce of control and ownership is characteristic of an increasing proportion of the Australian economy. At the political level, however, controllers and owners combine in framing anti-Labour policy, in seeking an electoral mandate to conserve the private property basis of society, and, if electorally successful, in managing the affairs of the country according to the accepted canons of the property-conscious middle-classes.

The anti-Labour parties are parliamentary parties, joint heirs, with the Labour Party, of the British parliamentary traditions. Like Labour, they depend for actual electoral and parliamentary

majorities upon the floating vote, and more particularly upon that section of it which owns or aspires to own small savings or a little capital. They offer an administration understanding and sympathetic to private business and industry, willing to make small advances in social services, and generally favourable to the full maintenance of the civil and personal liberties which have been traditionally associated with parliamentary government in British countries.

To win an electoral majority anti-Labour's principal supporters have to acquiesce in modifications to the programme they would prefer. They have to offer a "ransom," as Joseph Chamberlain called it, for the continued security of their property tenure. This ransom, normally in the coin of social services, consists usually of planks lifted from the Labour platform and adapted sufficiently to dovetail into the anti-Labour social pattern with least disturbance and expense. Visitors to Australia often express amazement at the lengths to which anti-Labour will go in these bids. Thus one American in the 1920's was astonished at "the campaign of the selected Nationalist [i.e. anti-Labour] candidate in one of the most conservative suburban constituencies in the Commonwealth, who tried to outbid Labour by advocating schemes of national housing and social insurance that would seem dangerously radical to many an American trade unionist."[1] Whereas within Labour there are divisions and controversies about the pace and route of the march towards socialism, within anti-Labour the schisms occur over concessions and the pace of retreat from the ideal of Capital.

Anti-Labour has, of course, other trimmings to its platform than merely social and economic concessions. These parties have always pretended to a corner in "patriotism," particularly since the conscription issue split the nation in 1916–17. They talk much of the bonds of Empire. With some of their followers these bonds are a sentimental matter, with most a weighty defence consideration, with many they are very tangible economic links. There have been very considerable British interests in the stock of leading Australian banks and corporations, some of which even have London directors or directorates. Amongst Australians there is a vital interest in the British market.

There is, again, the cult of the "little man": anti-Labour seeks support as the professed champion of the widows, the orphans and the headless, helpless army of small savers and investors. In fact the political leaders of the business community have had the widows, orphans and "little men" of Australia mobilized almost full-time in recent years as a protective screen for their sallies and defences against Labour Party policies.

The hard core of the anti-Labour appeal remains, however, the principle of private property in and private operation of the means of production and distribution:

> "Let us make no mistake here. This is the real line of division between us [and Labour]. We put forward as a national policy the development of the industries of Australia, but we insist that those industries and those resources are to be developed by private enterprise, under the control of laws which shall secure equity and justice in the matter of wages, hours and conditions of employment. Our fundamental difference is not in respect of those wages, hours and conditions, but in respect to the nationalization of all those industries instead of their preservation in the hands of our citizens and workers, and their progress by the motive power of independent initiative. We rely upon our citizens working for their own families and their own future, to develop our resources and perfect our industries in a way that could never be attained by a regimented body of public employees, marshalled under political control, and bringing political pressure to bear in their class interest, no matter how ruinous its effects might be upon Australian interests at home and abroad."[2]

Alfred Deakin, who thus expressed the central position of the anti-Labour parties, was a product of the nineteenth century. The unique thing about the nineteenth century was that in all history it alone saw men successfully attempting to represent the profit motive as a moral factor. In that century, so long as production units remained small and the transfer of capital and labour could be carried out without large-scale dislocation, it remained possible sincerely and plausibly to believe that the individual, in seeking his own self-interest, normally contributed to maximum production and thus to the general welfare. This "moral" claim for their economic philosophy and policy, so long as it remained plausible in the face of the facts, was a real element in the strength of their appeal.

Yet even when Deakin was thus reaffirming the middle-class faith in 1912, events and economic institutions were so developing as to falsify the very assumptions upon which the "laissez-faire," "free enterprise" economics were based. The thirty-five years since 1912 have seen a gradual retreat in both theory and practice. Indeed, "national protection and imperial preference had for Deakin the same quasi-religious significance which universal free trade had for Cobden."[3] There was developing already in the Australian economy—and the process has since been accelerated considerably—a high degree of concentration of economic power. This heavy capitalization and monopolization of industry meant not merely that the fate of capital and labour in particular enterprises could no longer be a matter of indifference to the community. It meant that the whole basis of free competitive enterprise and of freedom of entry into an industry was in progressive eclipse. This drift has gone on until to-day, over wide sections of production and distribution, "the

choice," as Tawney puts it, "is between a monopoly which is irrepressible and private and a monopoly which is responsible and public." Moreover in Australia the monopolies and near-monopolies are frequently outposts of such world empires as General Motors, Henry Ford, Imperial Chemical Industries and Shell-Royal Dutch. Irrespective of their overseas origins, campaign contributions from such sources doubtless talk the same language as native donations.

These developments have not led to a supersession of the campaign language of the competitive economy days of Alfred Deakin's political apprenticeship. Anti-Labour talks of free enterprise and private enterprise when the characteristic basis of economic activity is now large corporate enterprise and diminishing competition—"a cluster of private collectivisms." It talks of the public advantages of large-scale corporate industry when in fact the purpose of combination and trustification, and of the web-like interlocking of innumerable directorates and holding companies, is not always efficiency or low prices but frequently restriction and pricing of output to produce monopoly profit. It talks of the sovereignty of the consuming public when its every other thought is of the governmental protection or subsidizing of the highly-organized producers, whose advertising agents are but one of several instruments for enabling them to dictate the consumption habits and levels of the nation. In consequence even Liberal business journals are becoming critically concerned:

> "Our economic policy since the last war, and especially in the last decade, has not bred efficient business men.... There has been no need to exercise the talents of the competitive producer in a community where monopoly has been fostered, where restriction has been a virtue, and where a protective tariff or subsidy has been forthcoming for every failure. The financial wizard, the amalgamator, and the lobbyist have flourished; but not the producer."[4]

Squarely faced, the recent trends in industrial and commercial affairs offer certain advantages as well as disadvantages to the community. But a regular contradiction between electoral talk and policy implementation on the part of the political leaders of the industrial and rural producers only serves to confuse and exacerbate public and parliamentary discussion. Verbally at least anti-Labour is "waging on many fronts a desperate rear-guard action against history," as it is unfolding here in Australia. In the policy statements of anti-Labour, as the "Manchester Guardian" wrote of the pronouncements of the British "Liberal Nationals" in 1945, "we glimpse the full horror of the nineteenth century on being brought face to face with the twentieth."

But it would appear that Labour has not yet fully or successfully seized its political opportunities by impressing on the

general public consciousness the dualism and the dilemma in the anti-Labour creed. At every turn Business and the producer need Government aid. They need tariffs, subsidies, special tax rebates, drought relief, flood relief, special privileges of one sort or another. They need Government aid of various sorts in connection with transport and marketing. They profit from the scientific, statistical and informational services of the Government. They need governmental provision of uneconomic public utilities. They want public works and public conservation services. They want the Government in difficult times to bolster London Funds. But Government intervention? Oh no! Let Business and the producers run their own houses and keep them in order. No room for the public interest there! Any direct attempt by the national Government to improve wages, hours or conditions, to intervene to improve the organization or efficiency of an industry, to mitigate the worst evils of competition or the most vicious practices of monopoly, to regulate production for the more successful conduct of marketing, to control London balances to sustain the quantum of London Funds—intervention in these fields is plain interference. Intervention for Capital, then, appears to be one thing; intervention for the general public, quite another. "To the Australian," writes Hancock, "the State means collective power at the service of private 'rights'. Therefore he sees no opposition between his individualism and his reliance upon the Government."[5] Such calculated confusion is not a monopoly of the businessman in Australia, but his is the prime instance:

> "Australian manufacturers," says the president of their Associated Chambers, H. J. Hendy, "will have a most determined argument to hold what we have and to add to it if we can. If we are to lose anything it must be taken from us, not supinely handed over. In all talk about charters, pacts and agreements, in the undisguised concern of overseas manufacturers for future export markets.... with all the theorizing of economists and social welfare experts about the Golden Tomorrow, I detect too strong a tendency to accept as inevitable a lowering of tariffs."[6]

The language of Adam Smith, George Reid and Alfred Deakin on economic policy, though still the stock-in-trade of all but an exceptional few Australian anti-Labour politicians, serves only to confuse parliamentary debates and electoral controversies. Politically, this language is still frequently effective in rolling up the votes, for it is the language which the whole Press speaks and in which a large proportion of the public continues to think. In reality it is often as dead a language as Latin. But as Latin has its uses for the lawyer so the language of "laissez-faire" serves the political spokesmen of Capital. Amidst the mental confusion between past and present, and amidst the rapid changes in modern conditions, the strong, well-

organized Business or producer group which knows exactly what it wants and how to get it, can go straight to its objectives—provided Government "interference" is minimized and full Government "assistance" is forthcoming.

It is one of the major ironies of recent Australian politics that Labour, which professes socialism, should have become fascinated with a mild amalgam of nationalization and the measures with which Keynes and Beveridge propose to patch capitalism, while anti-Labour, though under the necessity of seeking high and low for an economic and social programme at once attractive to middle voters and acceptable to campaign contributors, shies off Keynes and Beveridge as dangerous radicals and cleaves uncertainly to the orthodoxies of stout King Edward's day.

How much more bitter parliamentary life would become if Labour made a more determinedly socialist challenge while anti-Labour is still of that mind—and, indeed, whether parliamentary government could successfully continue along traditional lines—are pertinent questions to which the current struggle over banking may suggest an answer. Hitherto all that could be said was that political action seriously challenging to Capital had been fragmentary and rather tentative, with the result that the capitalist became, in the opinion of some observers, "disgruntled, deficient in public spirit, and unwilling to give up his economic and financial power, but conscious that the assaults of the politicians are really ineffective."[7] His dissatisfaction is perhaps aggravated by the occasional realization that:

> "Business has been lacking a .... comprehensive and sound economic philosophy. In its tireless pursuit of profits and material rewards it has been partially blind to its responsibilities for employment, social security, economic stability within nations, and economic harmony between nations. Unwittingly and through this attitude it has been a potent contributory factor in international discord."[8]

What the apologist, Sir Herbert Gepp, thus sees clearly enough, the disinterested critic sees in wider (and, for our present purpose, very significant) terms:

> "The 'Liberal' consciousness is 'patriotic', but by tradition and sentiment rather than reason; it accepts this part of its social creed uncritically and, since it does not study social philosophy at all, without any real comprehension of social obligation. 'Liberal' leaders are well equipped to deal with legal and commercial problems, but are entirely ignorant of political and economic science: for this reason, no doubt, they tend to visualize society as a vast 'master and servant' arrangement and to be irritable if orders are not obeyed. Yet there is nothing in the political history of civilization which would lead us to conclude that capacity to manage a factory or wool store is of itself mental equipment for a legislator."[9]

And an American sociologist shows where such "drift" and inadequacy may lead a society such as the Australian:

> "Liberal democracy has never dared face the fact that industrial capitalism is an intensely coercive form of organization of society that cumulatively constrains men and all of their institutions to work the will of the minority who hold and wield economic power; and that this relentless warping of men's lives and forms of association becomes less and less the result of voluntary decisions by bad or good men and more and more an impersonal web of coercions dictated by the need to keep 'the system' running. These coercions cumulate themselves to ends that even the organizing leaders of big business may fail to foresee, as step by step they grapple with the next immediate issue, and the next, and the next."[10]

Australian Conservatives—whether pastoralists, farmers, industrialists or financiers—find Parliament, since the advent of Labour, has ceased to be a pleasant club in which they and men of like mind can meet at ease to manage "the common affairs of the bourgeoisie." It has become instead a distinctly unsettling arena where their whole philosophy is challenged before the national audience and where they, the largest taxpayers, are repeatedly dunned for increasing tax contributions.

Perhaps this accounts for the reaction, so common amongst anti-Labour parliamentarians in the 1930's, with their own team firmly in office, expressed in such terms as "leave it to Cabinet, let Parliament adjourn." This attitude had apparently its classic expression from Conservative Prime Minister S. M. Bruce, who was reported as remarking, "Let me pick half a dozen business men to manage the country's affairs and you can shut up all your Parliaments."[11] A reflection of this attitude came from another business man in the casual remark: "Oh, I take no interest in politics, as long as Labour doesn't get in."

Such a man is an easy mark for the anti-Labour parties' regular weapon, fear. H. L. Mencken has already been quoted to the effect that democratic politics largely consist in scaring the electorate half to death and then promising to rescue it. Just as in industry the employer has been able to use the threat of unemployment as an instrument of mastery, so in politics his spokesmen have been able frequently to scare a majority of voters with fearful pictures of what inevitable misrule by Labour would mean to their savings and security. From the third Commonwealth election, when George Reid shadow-sparred with the Socialist Tiger, and the 1910 election when Deakin was horrified to find the ties of Empire at the mercies of a Labour victory, the anti-Labour election cries have been directed to fear of disloyalty, of Bolshevism, of Red strikes, of inflation, and of disloyalty again in 1940. In 1946, as in 1906, the headlined purpose of Australian anti-Labour parties was: "To combat the trend towards socialization."

Throughout its history, anti-Labour has "capitalized the fears which the prospects of change induce in timid men—and especially in timid women. All those who are able to apply the popular epithet 'comfortable' to themselves tend to fear that changes may be for the worse."[12] The Jeremiac parliamentary attacks upon the measures of the Fisher Labour Government of 1910–13 fairly reflect the fears of property-owners lest majority rule should operate to the detriment of property rights. In time of economic and war crises even the solicitude of the genuine liberals within the anti-Labour parties for minority rights to freedom of speech, of industrial association and of the equal protection of the laws—the fundamental rights of men as citizens, as distinct from the rights of men as holders or controllers of private capital—is in danger of being submerged under the onrush of fear amongst their colleagues and supporters. While these things can happen—and experience suggests that no Party has a monopoly of virtue here—the foundations of parliamentary government require to be carefully safeguarded and a special emphasis placed by actual achievement on the enormous positive contribution it can make to restoration and maintenance of stability and national welfare under conditions of freedom.

II

The two major parties of the first Commonwealth Parliament, between which Labour held the balance of power, can best be described as Liberal Protectionists and Conservative Free-Traders respectively. But names have never meant much to anti-Labour—at least not to the party of the urban anti-Labour interests. The history of the Commonwealth is littered with its discarded names—Free-Trade, Protectionist, Liberal, Conservative, Fusionist, Nationalist, United Australia, Democratic, Liberal-Democrat.

The tariff did not long remain a live issue. The first Commonwealth tariff settled little enough, perhaps, but the first decade of the new century saw Australian protectionism firmly established. The initial Free Trade-Protection distinction between the anti-Labour parties consequently faded. They found it highly disadvantageous to their backers that they should form successive minority governments on Labour suffrance, and rule, in great measure, according to Labour's demands or veto. The better to combat Labour, therefore, they combined into the Fusion or Liberal Party in 1909.

This does not mean that vigorous electoral warfare against Labour had been absent prior to 1909. There had been no lack of financial backing for those leading the fight. George Reid, though far from rich himself, was able to carry his "Socialist

Tiger'' campaign all over Australia in 1905–6. In a Queensland town, for instance, when he arrived to find a travelling theatrical company in possession of the only hall, Reid paid them over £40 for its use without a moment's hesitation.[13] In the election campaign of 1906 some of the anti-Socialist candidates backing Reid received very handsome weekly subsidies. Equally important, they received very favourable treatment from the metropolitan press.

The 1909 coalition was a marriage of convenience: not surprisingly, it was an unhappy affair. The new party was called Liberal but it contained few liberals. ''Liberal movements,'' as Arnold suggests, ''always die in a time when the folklore is questioned. They rise again when men think they know what the eternal verities are.''[14] 1909 was such a time of questioning: the Labour tide was rising, Labour victory was near, Labour's enemies were nervous and irritable. It was bad enough for Deakin that, as he said, ''behind me sit the whole of my political opponents since federation.'' But they did not even sit solid. Several Conservatives, distrusting Deakin's liberalism in troublous times, took corner seats in the House. At a pinch they would assist him to provide what he called ''the only safeguard against more dangerous measures.'' Nor had Deakin himself welcomed the reluctant embrace of the Conservatives. He looked back regretfully to ''a third party as ours was and I hope will continue to be—liberal always, radical often and never reactionary. . . . But this is a very difficult line to take and keep and is going to be more difficult, I fear.''[15]

Deakin was right. A commentator in 1914 felt ''it is necessary to explain that the present Ministerial party calls itself Liberal, but this name is practically the only thing it has in common with Mr. Deakin's party. It is really a Conservative party, and is led by men who are the bitterest enemies of Mr. Deakin and his party.''[16] Labour in and out of office was acutely aware of the uneasy and negative basis of the anti-Labour fusion:

> ''The Hon. Member for Ballarat [Deakin] has thought fit to criticise the policy of this Government,'' said Attorney General Hughes. ''He has done so in a way of which, since he was never at a loss for words, it can only be said that there are no words even at his command, to explain his position and attitude. It is a thing beyond words. It is very fitting that a party which met in corners and hatched in darkness this monstrous combination, and which announced its existence to the world in a Town Hall to which admission was by ticket, should treat with contemptuous silence the Government policy—a policy which they cannot criticize and dare not denounce.''[17]

But the electoral success of Labour in 1910 and the speed with which planks of the Labour platform were implemented held the Fusion coalition together in opposition. The increasing illness of Deakin and his early retirement in favour of Cook

perhaps made anti-Labour solidarity easier. It is significant that by 1913 the former fiscal division had so far ceased to count that Cook, for many years an ardent free trader, won the party leadership over the protectionist Forrest apparently on the casting vote of the protectionist Deakin. There was in any case a growing sense of the need for parliamentary solidarity and discipline amongst anti-Labour men. The coming of Federal as well as State arbitration courts encouraged, even necessitated, organization by employers on a wide basis—organization which almost inevitably spilt over from the industrial to the political field.

The changing balance amongst anti-Labour supporters also probably contributed to a new spirit in that party. In the years before 1900 the anti-Labour bloc consisted primarily of graziers, mining interests, merchant traders, banks and shipping men. Notable absentees from the front ranks were the manufacturers and farmers—these gained significant economic and political strength—elsewhere, perhaps, than in Victoria—only at about the time the Commonwealth came into being. But the big and medium farmers were soon threatening to be able to out-shout the squatters. The manufacturers were soon challenging the influence of the merchant. The age of the Commonwealth was to be largely the age of these new men, but they almost certainly lacked as classes the same sense of assured well-being and security which had been their predecessors. For while they were only coming to the fore, their very foundations were already vigorously questioned by Labour. No wonder they were impatient of Deakin's liberalism.

Just as Labour had, as a newcomer to parliamentary life, felt the need for solidarity and discipline, so the new elements in anti-Labour—under Cook, who had deserted Labour rather than accept the Pledge—commenced to discipline their followers. In 1913, for instance, Senator Sir Josiah Symon, a Father of the Constitution, was excluded from the anti-Labour electoral ticket for his political sins, and failed, as an independent candidate, to hold his seat. As recently as July 24, 1943, R. G. Menzies gave his own obligations to his party as follows:

> "As an Opposition Member of Parliament, I am bound by the Opposition policy, except insofar as I expressly state to my own electors some views inconsistent with it."[18]

This, however, appears to be rather a more generous interpretation of the margin of personal freedom allowed to members of the anti-Labour parties than is frequently allowed to them, as Sir Josiah Symon's case, for one, suggests.

Anti-Labour entered the war years of 1914-18 badly defeated at the polls and sadly lacking in ideas. The Conscription crisis came as a fortunate occurrence for it. Hughes and his senior

colleagues, together with a thin sprinkling of the rank-and-file, left or were expelled by Labour for their attitude and actions in support of Conscription. For a few months they tried to maintain a precarious "National Labour Government" of expelled Labour men with the parliamentary acquiescence of anti-Labour. This position soon proved impossible: Hughes' following was not strong enough quantitatively or qualitatively; it certainly could not face an election on its own. Anti-Labour was growing impatient. Labour rank-and-file had resolutely turned its back on the Hughes' group for all time. That group had but one means of prolonging its political life: to link up with anti-Labour. The fact that Australia was involved in a world war in which her allies were hard pressed made it easier to enter the camp of the former parliamentary enemy with some show of bravado and virtue. Complete party apostasy was the more readily dressed up as absolute national necessity.

Even so the actual circumstances under which Hughes founded the new anti-Labour merger were strange and not without influence on the terms of union. Though there had long been understood to be subterranean talks going on between the Hughes' group and anti-Labour, the Federal leaders of anti-Labour were not present at the inaugural meeting:

> "Mr. Cook, the leader of the Liberal Party," said the Melbourne *Argus* in its leader of January 11, 1917, "does not seem to have been informed of the proposed meeting, and in a speech to the executive of the Liberal Party in Sydney on Monday night he said, 'I see in some quarters an attempt is being made to bring into existence another party, an "in between" party'.... Senator Millen at the same meeting indicated that he feared the new party was designed as an attempt to buttress the Prime Minister against the Liberal Party, which had given him generous support. These remarks indicate that either there has been a lack of openness and candour respecting the nature and purposes of the new organization, or culpable carelessness in not informing those who ought to have been the first to be consulted."

Whether these explanations are correct, or whether the Liberal leaders were unwilling to associate themselves publicly with the new party until they had tested public reactions matters little now. The National Federation had been duly launched at a meeting in the Melbourne Town Hall to which admission was by ticket—in the true tradition of the Fusion's inauguration, about which W. M. Hughes had waxed so eloquently sarcastic.

Into the first platform of the new party Hughes wrote "Responsible Government" as a plank—an intended reflection upon the Caucus principle which he had helped to evolve, which he had enforced, and which in "The Case for Labour" (1909) he had so emphatically defended. As a gesture to ex-Labour men who, in transferring their allegiance, had not lost all sight

of Labour ideals he also wrote into the Nationalist platform wage regulation and the "New Protection." More than that, the new Party, on paper at least, adopted a constitution patently modelled on that of Labour. There were an Interstate Executive, State Councils and Branches. There was an all-powerful annual Interstate Conference, to which came three members from each State Council. The Interstate Executive, which also was to consist of three representatives from each State, was to exercise a general co-ordinating and supervisory function. The State Councils would otherwise order the party's affairs.

It was towards the end of the 1914–18 War that the Country Party (later "United Country Party") came on to the political scene. Even before that War farmers and farming interests had talked of political organization and distinct political representation. Special wartime problems, combined with the slump in Labour Party fortunes after the Conscription split, gave farmers the occasion and the opportunity:

> "The War necessitated the organization of production for war purposes all over the Empire. In Australia this took a peculiar form. Its products were required, but the shipping was not available to take them to the seat of war The organization of production had to be accompanied by organization for storing and holding the products. The end of the war found Australia over-organized for production, and with vast stocks. Farmers had produced stocks which could not realize war prices. Prices for local consumption were fixed against them. The control and disposal of vast stocks thus became a political matter .... Realization was facilitated by the post-war boom, but over-production remained and farmers' parties have concentrated on a policy to give adequate remuneration to the units in their over-developed industry. Pools and other marketing arrangements with differential prices for home consumption have been their main objective. Their policy has conflicted with that of both the other parties. Labour has seen socialism in the handling of the vast stores of primary produce and it has, therefore, strongly assisted the pooling policy of country parties. But other Labour policy has antagonized the agrarians, and the history of the past twelve years has been a series of uneasy coalitions between Nationalist and Country parties."[19]

To this an earlier commentator added as reasons for the rise of the Country Party:

> "....a protest against....a tariff designed to foster Australian manufacturers. In addition, there was a widespread if less clearly defined sense of dissatisfaction with the growth of public expenditure and the consequent increase of taxation, and a feeling that, at all events in New South Wales and the Commonwealth, the executive had become all-powerful, allowing members no real control over expenditure, and always able to prevent criticism from becoming effective by the threat of dissolution. Again, in New South Wales at least, there was wide

dissatisfaction with the methods of the party organizations and in particular with the method of pre-selection, which deterred many eligible citizens from coming forward and was thought to give too much power to the old Parliamentary hands.''[20]

Despite its declared intentions, the Country Party, like the National Federation before it, soon found itself copying Labour organizational techniques:

''Unfortunately,'' wrote F. W. Eggleston, as early as 1920, ''the Farmers' Party is a party of small freeholders and will be intensely conservative. Moreover, to achieve political success it has adopted the system of the political machine with a pledge and pre-selection ballot.''[21]

This ascendancy of the ''Machine,'' and particularly of its central organs, has continued. The 1940 edition of the Country Party's Constitution (Victoria) provides for a pledge to be signed by all endorsed candidates:

''I agree to abide by the Rules, Constitution, Platform and Policy of the Party, a signed copy of which is attached hereto. I further undertake that in the event of my election to Parliament, should I withdraw from the Party, I will resign my seat in Parliament immediately after such withdrawal.'' (Rule 125).

The centralization of power in a headquarter's ''machine'' is expressly safeguarded:

''All nominations shall be submitted to Central Council for endorsement, and Central Council shall have the right to endorse or refuse to endorse any nominated candidate or candidates, notwithstanding that a pre-selection ballot shall have been held.'' (Rule 128).

In New South Wales similar provisions (Rules 49–50, 1939 edition) exist.

The Victorian rules also provided for fairly close control of the Country Party Member once elected. He must stand by the Platform and:

''Where the platform and policy of the Party is not involved, United Country Party Members of Parliament shall on meeting decide all Parliamentary questions, and shall be bound by majority decisions unless exempted by special resolution of the Party.'' (Rule 143).

The full extent of extra-parliamentary control is to be seen, however, in Rule 130, which can be removed from the Constitution only by a two-thirds majority of annual Conference, voting by ballot. This rule reads:

''(a) Before any Member of the Parliamentary Party shall accept a Portfolio in any other than a purely Country Party Government the approval of a majority of 66 per cent. of the members of Central Council must be obtained at a properly constituted meeting.

(b) At all future elections, Federal or State, Country Party candidates must contest such elections on the Country Party policy only, and not as Ministerial candidates; and no pact or alliance shall be formed with any party for any election.''

That the central group can be an embarrassment to a Country Party Ministry, at least in State Parliaments, was made clear in the unequivocal charges of the Hon. A. A. Dunstan, Premier of Victoria, in his policy speech at Eaglehawk on February 26, 1940. The adoption of the pledge was the less surprising in that many early supporters of the Country Party had, prior to 1916–17, been Labour men—farmers and country folk who voted Labour because they were hostile to trusts and combines and to the big squatters. A. W. Fadden was still wooing this section when he said to the electors of Darling Downs on December 5, 1936:

> "The United Australia Party gives its allegiance to the big financial and manufacturing interests of the cities, and to the middle men and monopolists, because it receives its support and power from those people. How then can the United Australia Party serve the countryside as well as those in the city who suck the life-blood from the countryside? Primary industries are subjected to repeated onslaughts and are beaten to their knees, preference being extended by the United Australia Party to cheap, foreign black-grown products so that city importers—the men behind the United Australia Party—should reap a harvest."[22]

The financial arrangements of the Country Party vary as between States. At a time when the United Australia Party subscription was 1/-, the Victorian United Country Party was 20/- (of which 16/- went to the Central Council). The Victorian Branch of the Country Party had no source of funds comparable to Big Business whence came contributions rendering the United Australia Party relatively indifferent as to its 1/- per head membership revenue. At the same time the New South Wales Country Party had a subscription of only 2/-, but by its constitution had given to the Farmers' and Settlers' Association and, more important, the Pastoralists' Association, integral places in its organization, looking to these for financial support.

The Country Party made its Federal debut at the 1919 elections, winning eleven seats. But from the first censure motion it cleaved to the anti-Labour side: in effect it has ever since constituted a device for attempting to stabilize one section of the former "floating vote" on an anti-Labour line—that section being the small farmers.

At the time of the Country Party's appearance W. M. Hughes was still leading an anti-Labour Government. When in 1923 it became necessary for the Nationalists and the Country Party formally to coalesce to keep Labour out, the Country Party insisted that Hughes must yield the leadership of the Government to a less "radical" and autocratic man. Mr. Bruce formed a government in which the Country Party, on account of its strategic "third party" position, enjoyed more portfolios than its parliamentary strength strictly warranted. It retained them

for fourteen of the next sixteen years, under the leadership of Dr. Earle Page, a shrewd surgeon who had used the New South Wales New States Movement as a springboard into politics and power.

The Country Party settled into double-harness with the party of the urban middle-class interests. It acquiesced in tariffs in return for "Bawra" and other organizations for disposal of war surpluses, for national wheat pools and other marketing schemes, for "home-price" arrangements and for subsidies. The Country Party's hand is to be seen in such legislation as the Federal Aid Roads Act and the Commonwealth Bank Rural Credits Act (1925). So, when it seemed that anti-Labour might again be divided as in the days of Barton, Deakin and Reid, the expected Country Party attack on tariffs simply failed to eventuate. Dr. Earle Page, as Commonwealth Treasurer in the Bruce-Page Ministry, was apparently content to see tariff revenue rise forty per cent. in five years, constituting with excise the greater part of Commonwealth revenue. This state of affairs has accentuated the warning that:

> "The policy of intervention has enormous possibilities for good, provided the members of the community are capable of appreciating the *interdependence of their interests, but it has equally enormous possibilities* for harm, if man's attention is primarily focussed upon their conflicts of interest and if government intervention becomes a device to help many groups exploit the rest of the community. Unfortunately, there is a bias in existing political institutions .... which makes them reflect the conflicting interests which we have as producers far more effectively than the common interests we have as consumers. Consequently, one feels safe in predicting that government as now organized is not capable of formulating a policy of intervention which will be satisfactory in the long run. This bias in our political arrangements can never be entirely removed because men's interests as consumers are too much alike to be the basis for political parties...."[23]

The Country Party leaders have done nothing to extend its appeal to the wider electorate. The sectional basis of their interests prevent their conceiving or executing a national policy reflecting broad insight into the needs of the whole nation for stable progress. In their make-up the solid and limited tenacity of lobbyists has never given way to the sweeping vision of broad national leadership. The Country Party has been represented, for the most part, by men of limited political training. Their individualistic conservative outlook may not always be equal to the potentialities inherent in modern technological developments even in rural industry. Their inexperience in many fields outside rural affairs has sometimes made them fair game for other pushing interests. There have been stresses and strains amongst the rural interests themselves and these have been accentuated by personal rivalries and incompatibilities. The lid was

removed, for example, in November, 1940, when A. G. Cameron resigned the Country Party leadership, using these words amongst others in the process:

> "Everlasting intrigue and manoeuvring for personal advantage reached its zenith in ruptures of the seal of Cabinet secrecy which must ultimately make any Minister's position inside either a party or a Cabinet untenable. No party can function if its internal state is a stew of simmering discontent, spiced by insatiable personal ambitions and incurable animosities. No leader can lead successfully if he must devote most of his time to outwitting rivals, or to be outbidding them for support, or to be watching every footfall lest he stumble on a mantrap or a mine."[24]

The urban anti-Labour party became considerably divided within itself by 1929 and certainly was not eager for the responsibility of continuing to hold office in the teeth of the economic blizzard which was already plainly on the way. It retired discomforted, yet not wholly sorry to hand office to Labour in the circumstances. Labour, lacking insight, imagination and a Senate majority to cope with the storm, itself disintegrated, and 1932 found anti-Labour, complete with a new ex-Labour leader, returned triumphantly. This time the name of the urban anti-Labour element was the United Australia Party.

The Constitution adopted by the 1932 Conference of the new Party (Victorian Branch) again displayed the strong central influence. There was provision for a pledge:

> "No candidate shall be endorsed who does not agree, either publicly or in writing, to support generally the platform of the organization." (Sec. 34).

The Central Executive was given power to re-endorse sitting members without an electorate convention unless such were demanded by the rank and file. If notice was short the Central Executive was empowered to nominate, "after consultation if possible" with branches. In any case, no convention could be called except through the Central Executive, while:

> "Any branch which fails to observe the decision of a Convention or of the State Council, or of the Central Executive, shall be deemed disloyal and may be forthwith disbanded; or, alternatively, the Central Executive shall have power to expel those members who refuse to respect the decision in question." (Sec. 52).

The New South Wales Branch Constitution (as at April, 1940) provided that all pre-selection candidates must pledge themselves to refrain from standing against the endorsed candidate if not selected, on pain of at least four years' expulsion from the party.

Such rules as these must be read in the light of the fact that few United Australia Party branches between elections were

very live bodies, while some went out of existence altogether. Most branches were essentially electoral machinery—they were not centres for propaganda and education and for local party administration in the same sense as are Labour Party branches. There was little need for them to be such when almost every metropolitan newspaper in the country does anti-Labour propaganda work daily. Where they had a continuous existence they were frequently little more than social centres.

The State Executives or Councils were in fact the all-powerful bodies, particularly those in Victoria and New South Wales. It was with these bodies—and the coteries which gathered their finance—that the national parliamentary leaders of the Party had to keep closely in touch, for there was scarcely any national party machinery at all. The close personal touch which Prime Minister Lyons maintained with the National Union[25] and the United Australia Party State Executives elsewhere apparently suited all elements admirably. Prime Minister Menzies, on the other hand, while maintaining close liaison with the Melbourne group, was reported to be less intimate with the Sydney machine.[26] This led to attacks upon Mr. Menzies by the Sydney Press, presumably with the acquiescence of leading Sydney supporters of his Party. J. A. Lyons had, of course, the advantages of coming from a small State and of having no "past" in anti-Labour parties, whereas R. G. Menzies was a Melbourne man, closely associated with big Melbourne financial interests—Staniforth Ricketson of J. B. Were & Son, for instance, frankly stated to a Royal Commission in 1941 that "I was such a friend of Mr. Menzies and the centre of a group of men closely interested in Mr. Menzies."[27]

But it was not only the leaders who had to keep in line with the ideas of the Executive. Though the President of the Victorian United Australian Organization claimed—

> "We never tried to discipline any member of Parliament, and I think it extremely unlikely that we would attempt to do so. That has always been one of the main planks of the United Australian Party platform —Members represent the people, not the organization."[28]

practising United Australia Party politicians on occasion told another story. Thus the Hon. Ian MacFarlan, formerly Victorian Attorney-General, wrote to his electors in 1937:

> "It has been claimed that members of the United Australia Party, as distinct from those of other parties, have perfect freedom of political expression and action. My nine years' experience with the Party has convinced me that this statement is a mere sham. While it is quite true that members are not required to give express pledges, the penalty of voting, speaking or acting contrary to the views of the Central body is that its powerful hostility is earned, especially when the question of endorsement at the next election is being considered. During the last Parliament my alleged freedom as a member of the Party called down

the wrath of this body on me in respect of four major matters.... The hostility culminated in the threatened endorsement of a candidate against me at the recent election. It was common knowledge that 'they' were determined, if possible to do it successfully, to endorse a candidate *against me*....Ever since I have been associated with the Party it has been the habit of its members to attack the caucus system of the Labour Party. The central body referred to is merely introducing in itself that system into the United Australia Party. It cannot be wrong in the Labour Party and right in the United Australia Party. In the case of the latter it is quickly driving the Party on to the rocks by seizing control to the detriment of and causing the disappearance of the branches of the organization in the constituencies. My experience has been that the members of the central body, as bosses of the United Australia Party, are little different to the much criticized bosses of the Labour Party. The latter are at least frank and open about it."[29]

This is in startling contrast to the description of the Victorian president of the United Australia Organization:

"The United Australia Party is composed purely and simply of members of Parliament, whose election to the Legislature has been supported by the branches and members of the United Australia Organization acting in conjunction with the Australian Women's National League and the Young Nationalists' Organization. Once those members have been elected, the extra-Parliamentary organizations just referred to do not have any control over them, and they are free to vote and speak as they think fit."[30]

The Melbourne "Herald," whose opinion should carry some weight in these matters, declared with surprising and unusual rancour:

"It has never been disclosed to the public who comprises the National Council of the United Australia Party, how it is elected or to whom it is responsible. It has no recognized authority except such as it derives from the circumstances that it collects and distributes the money which finances the political organization. It is quite clear, however, that this arrangement can give the Council a determining say both in the Party's policy and in its Parliamentary representation. It has only to provide or withhold financial support to have its directions faithfully reflected in the composition of the Parliamentary party."[31]

The Melbourne "Age" spoke of "'the Collins Street junta' working within the National Union, and seeking to continue to control the party from behind the scenes."[32] And again of:

"....a self-appointed clique which for many years, through control of party funds, has exerted decisive influence on pre-selection and nominations of 'officially endorsed' candidates for both State and Federal Parliaments. As a political entity, the National Union is unknown to the [Party] Constitution, or even to the average elector. The public never sees its policy in process of formulation by methods of open discussion or periodic conferences and election of office-bearers. Although the United Australia Party makes a show of pre-selection by local conventions, everyone knows that the real power in

> the process resides with this electoral coterie, whose office-holders are unknown to the public, and whose self-awarded titles to intrude are repugnant to all democratic concepts. At present power in an obnoxious form is held over members. A perpetual sword of Damocles is hung over each head, and whispering by irresponsibles or an underground intrigue may be enough to have the suspending hair severed. Exercised by private citizens for special purposes, this power is virtually one of political life or death.''[33]

In July, 1943, J. J. Simons resigned his Chairmanship of the Executive of the National Party of Western Australia (i.e. the United Australia Party equivalent in that State), alleging undue influence by an outside body, "working under cover." He went on to say:

> "Even candidates endorsed by the party and encouraged to enter the contests were, if not acceptable to this outside junta, denied benefit of party funds While this system prevails, it means that candidates, if elected, financed by and with the approval of this private executive, surrender their freedom and become the creatures of an extraneous body.''[34]

In a Court judgment at about the same time Mr. Justice Wolff in Perth made it plain that this "junta" referred to by Simons was the same National Union with headquarters in Melbourne:

> "The evidence convinces me that so far as Senate elections are concerned no contribution for them is made from party funds. The whole of the expenses for Senate elections—money required for the furtherance of the candidature of candidates—is furnished by the National Union.''[35]

All this evidence is from within the anti-Labour camp, and there remains only to quote the leader of the United Australia Party in the Victorian Parliament and the leader of one of the factions into which the United Australia Party in New South Wales split in 1944:

> "Mr. Hollway, M.L.A., State Opposition Leader, to-day issued a statement on his relationships with the United Australian Organization, declaring that the personal attack on him by the chairman of the United Australian Organization (Mr. Austin) had a very much deeper significance than appeared on the surface. The real conflict was between himself and the financial moguls who controlled the National Union.... Party funds should be controlled by the whole of the members of the organization. At present a small coterie of not more than half a dozen gentlemen, who called themselves the National Union, had a complete stranglehold on a party which represented 400,000 Victorian voters, by reason of the fact that they, and they alone, controlled the whole of the party funds. Mr. Hollway said he had never seen a balance sheet and did not know whether one was presented. The control of the party by this group had laid a 'dead hand' on previous attempts which had been made to make the party more democratic. Democracy was in jeopardy not only from external aggression, but was equally in jeopardy through the activities of such secret juntas of financial wire-pullers.''[36]

At the same time it was reported from New South Wales that:

> "Opposition to the United Australia Party Consultative Council, which controls United Australia Party finance policy in New South Wales, *has been simmering for a long time.*"[37]

Attempts to effect even such elementary reforms as selection of Federal and State candidates in New South Wales by an electoral college comprising the office bearers of electorate councils of the party were defeated in the United Australia Party State Council.

The United Australia Party split in 1944 and faction leaders sparred keenly:

> "The leader of the Liberal Democratic Party, Mr. E. K. White, last night described the statement of the Democratic Party leader, Mr. Weaver, that his party's funds had 'no tag' to them, as a 'piece of brazen effrontery and an insult to the intelligence of the electors. Until quite recently the Consultative Council financed the United Australia Party. Big business became dissatisfied both with the efficiency of the council and the United Australia Party, and as a result the Institute of Public Affairs was formed. The personnel of the Institute of Public Affairs Council is very similar to the old Consultative Council of the United Australia Party. The Institute of Public Affairs is now financing Mr. Weaver's party and we defy Mr. Weaver to deny this. Is it reasonable to suppose that the United Australia Party will not defer to the wishes of the Institute of Public Affairs'?"[38]

In both States and elsewhere in the Commonwealth this strife was largely overcome and the Party settled down in 1945 to conduct its business as usual under the revived name of the Liberal Party, with certain formal and even substantial changes in its constitution but little change in its personnel, purposes, methods or financial management apparent from outside.

It may be argued that this account relates only to the anti-Labour parties centred in Melbourne and Sydney and that, since the Federal structure of these parties is loose, equal treatment should have been given to the distinctive features of the same parties in the smaller States. The fact is that in the numerically smaller States the control of the anti-Labour parties by the big local interests and magnates is perhaps even closer. The four smaller State capitals can not unfairly be described for political purposes as "one club towns." The key financial, commercial and landed men of each of those States tend to meet regularly at the Adelaide, the Weld, the Queensland or the Tasmanian Clubs, as the case may be. Luncheon, dinner, drinks and politics go together. In those clubs an unofficial and extra-parliamentary caucus, as it were, is in regular session. There, when anti-Labour is in office, successes, failures and plans are discussed and assessed. When Labour is in office, it is there that plans are laid to gather the sinews and personnel with

which to unseat it. Even where the initiative in details passes elsewhere from time to time, the tone, tempo and direction are as likely as not to come from these same sources.

Anti-Labour voters apparently vote for their candidates on such assurances as that of the President of the Victorian United Australian Organization and others that these men are "absolutely free," when in fact very oddly and quietly constituted and powerful bodies have wielded very considerable powers over prospective candidates and sitting Members.

Nor are the electors usually aware of the private (and sometimes perhaps lucrative) briefs held by the men selected and elected at the pleasure of these back-stage groups. A pair of lost Senatorial tempers served to reveal this fact, for instance, about a Queensland anti-Labour Senator:

> "*Senator Foll*: 'Even when he [Senator Crawford] was in the Ministry he was the paid President of the Australian Sugar Producers' Association. He has received payment from that organization every year since he has been a Member of this Parliament.'
> *Senator Crawford*: 'About £100 a year.'
> *Senator Foll*: 'As the paid servant of the Australian Sugar Producers' Association he has received money, over and above what he is paid as a Senator representing Queensland, in order to advocate the cause of the sugar industry'."[39]

Unpaid briefing is a matter of course for men elected to manage the affairs of the middle classes. Reminiscing about the history of a particular Income Tax Assessment Bill, Ex-Senator H. C.-M. Garling recalled that ". . . . Senator Drake-Brockman was practically briefed by the pastoralists to watch it, and he and I found many things that needed qualifying and some that needed eliminating."[40]

It will be clear from the evidence set out here that there is the same rivalry for control of the anti-Labour party machines and for influence within them as there is in the Labour camp. The federal or interstate element in the situation again causes a great deal of the friction within these political groups. On October 24, 1941, for instance, the "Sydney Morning Herald" saw fit to attack the Commonwealth Capital Issues Advisory Board which the Menzies Government had set up. It gave a detailed account of the private interests represented by members of the Board; it criticized several approvals the Board had given, despite the war emergency, to large public issues of debentures and shares; and it stressed the coincidence that several of these issues were underwritten by the Melbourne firm of J. B. Were (whose spokesman, Staniforth Ricketson, had publicly declared himself to be the centre of "a group of men closely interested in Mr. Menzies"). Clearly the Board's major sin was its strong Melbourne membership and affiliations.

Popular rights and liberties and standards of political behaviour and administration may on occasion be as well served by the frictions and explosions within parties as by the electoral and parliamentary clashes between parties. For at least frictions and explosions betoken activity and interstate rivalries at least sustain alertness. While there is liveliness within a party no party machine can very long survive unchallenged an undue tightening of discipline or an undue narrowing of control or policy.

Within the anti-Labour parliamentary parties the clash of outside supporting interests is clearly reflected. Even when the coalition is in office these parties normally meet separately, in their own caucuses. Though they may thus feel that they serve best their electoral chances and their economic purposes, they remain the more liable to sectionalism and faction. In that respect, anti-Labour remains, in most sessions, a less effective parliamentary team, and, in most elections, a notoriously less effective contender with Labour. For the occasional strongly individualistic personality who enters parliament under the Liberal or Country Party banner, however, this very disjointedness may make survival more possible and, while he lasts, more comfortable. Late in 1946 the anti-Labour leaders announced that they had set up a parliamentary joint executive to plan the more effective direction of their combined efforts in the two Houses. This institution has yet to establish and prove itself. It is clear, however, that the parliamentary machinery and technique of the anti-Labour parties reflects their realization of the effectiveness of the Labour Party in that direction. Their necessity is that of Lewis Carroll in the domestic politics of Oxford University:

> "We must combine, aye! hold a caucus meeting,
> Unless we want to get another beating.
> That they should "bottle" us is nothing new—
> But shall they bottle us and *caucus* too?"

CHAPTER V

PARLIAMENT: THE HOUSE OF REPRESENTATIVES

"The powers of Parliament are to the body politic as the rational faculties of the soul to a man."

John Pym.

"Parliament, indeed, can never hope to be a congress of the nation's best wisdom. Neither can even the most idealistic revolutionary committee. Each has ultimately to carry along with it the will of the average man, and is bound to be hampered by the average man's shortcomings in the matter of intelligence, education, steadiness of purpose and public spirit.... If Parliament is merely to reflect this or that politician's love of power, the average man will turn from it as an instrument of trickery when it ought to attract him as an instrument of human progress. If it cannot respond sensitively, indeed, both to his needs and his sense of justice, he will come to regard it impatiently as a mere obstruction invented by babblers."

New Statesman.

"The school of Parliament and the games of party politics nurture a spirit of their own. This spirit, its versatility and elasticity, its joy in the game and respect for the rules, its enterprise and vigour, may be supplemented, but cannot be supplanted by rational knowledge and technical superiority."

F. E. Dessauer.

"Responsible government is the attempt, never completely successful, of free democracies to secure in an integral process an effective forum, proper consideration and decision, and effective execution."

Sir Frederick Eggleston.

I

THE Australian National Parliament is not a "sovereign" legislature. Quite apart from the now nominal constitutional powers of the Imperial Parliament to legislate for Australia, the Australian Parliament is bound by a written federal constitution which specifically enumerates its powers and lays down procedures and conditions for observance in their exercise. Powers other than those so enumerated lie with the State Legislatures. Above both Commonwealth and State Parliaments the Constitution sets the High Court (and, in some

appeal cases, the Judicial Committee of the Imperial Privy Council) as arbiter when disputes arise as to the seat or extent of particular powers. While Parliament sacrifices any claim to unlimited "sovereignty" in order to make possible a federal division of powers, the federal principle is, however, modified to the extent of admitting Cabinet responsibility primarily to the Lower (or "National") House—as distinct from the Upper (or "States") House.

From the beginning, the Commonwealth Parliament has felt its strictly limited powers to be inadequate for the national tasks in hand. As ideas of the role of government in everyday affairs have developed the limitation has been more keenly felt. Sir Frederick Eggleston has explained that:

> "The history of the Commonwealth is that it has speedily settled its policy with regard to the great national problems [e.g. the tariff, immigration policy and defence] and then turned its attention to the political powers [e.g. trade and commerce, and industrial relations] and found that there are not enough of them. What there are, are hampered by limitations."[1]

It is true that, while some powers inhering in it, notably the external affairs power, have not been exhaustively exploited by the Commonwealth Parliament, others, such as the taxation and conciliation and arbitration powers, have been successfully made to yield more to their possessor than most of the Fathers of the Constitution dreamt was possible.

Amendment of the Constitution is, moreover, placed beyond the powers of the Parliament at Canberra alone, though initiation of amendment lies with the Commonwealth Parliament and not with the States or the people. It is perfectly true, as Henry Bournes Higgins assured the people of Geelong in the Federation campaign, that:

> "Not a section, not a phrase, not a word in this Constitution can be changed by the Federal Parliament, no matter how urgently the change may be required, and even though every Member in each House of Parliament may vote for the change.... To make a change in a single word in this Constitution, there must not only be an absolute majority of both Houses of the Federal Parliament, but the change has to be submitted to the electors in the several colonies, and unless there be a *majority of the people, and also a majority of the States*, in favour of the change, the change cannot be made. Even if four out of every five Australians voting vote for the change, the change is not necessarily carried."[2]

The institution of judicial review by the High Court has had the inevitable, but none the less unfortunate, effect of making many people look at proposed legislation first from the point of view of its constitutionality and only secondarily from the viewpoint of its intrinsic worth. Or, if they look at it first from the

viewpoint of its intrinsic worth and find it inimical to their interests, they frequently go to great pains to oppose it publicly on constitutional grounds rather than on grounds of interest. As an anti-Labour Minister admitted:

> "Its financial power has made the National Parliament the most convenient channel through which the people of Australia . . . . can express their desire for social benefits or 'reforms'. Conversely, it has tended to exalt constitutional checks and limitations in the mouths of those who desire to resist disturbance and expense."[3]

The tendency goes further and becomes "a tendency on the part of some elements in the community to accept laws only when no ground for their challenge in the courts presents itself."[4] Parliament is at a further disadvantage in that the High Court's views on the constitutionality of a given piece of legislation are, in some important instances, more or less unpredictable. There are relatively few unanimous judgments in leading constitutional cases, and even where they occur the reasoning of the several judges does not always coincide. Over time the personnel of the Court itself changes, and the maxim "quot homines, tot sententiae" tends to apply.

By complicating and sidetracking debate on the basic issues, real or imaginary constitutional limitations may throw a frequent shadow over the best traditions of parliamentary lawmaking, even if they do not detract from Parliament's other major roles as a forum for discussion of national policy and as controller of the public purse.

The Constitution not only sets the High Court over against the "sovereignty" of Parliament in disputes over Commonwealth and State powers, but even to some extent in the matter of Parliament's conduct of its own business. Thus, in the first decade of the Commonwealth, the "New Protection" was stricken down by the Court, not only on the ground that it was "ultra vires," but also on the ground that, contrary to Section 55 of the Constitution, other than taxation matters had been "tacked" on to a Taxation Bill.[5] Such an exercise of power by the Court—admittedly a legitimate exercise under the Constitution as it stands—means that there is, above the Speaker, another extra-parliamentary authority which can, on appeal, determine what is a tax measure and what can properly be included in such a measure. In other words, a function which in the Imperial Parliament belongs to a high officer of Parliament itself—the Speaker—is in Australia a matter finally for a body above Parliament and unaccountable to the people. Again, by passing the Disputed Elections and Qualifications Act (1907), Parliament has given the High Court further powers to intervene in the conduct of parliamentary affairs—though such an Act is, of course, simply revocable and hence in no constitutional sense a further diminution of the Parliament's limited sovereignty.

In some other matters than those connected with the High Court the autonomy of the Parliament is categorically limited by the Constitution. The life of a Parliament is set at three years, at the end of which period an election must be held for all seats in the House and half the seats in the Senate. The ratio of Representatives to Senators is fixed. Procedure for Money Bills and deadlocks is prescribed.

There is at least one recorded case where a leading Member seriously suggested by-passing one constitutional limitation in an emergency. Prior to the outbreak of the First World War writs for a general election had been issued and the campaign was in progress. In the face of the war crisis Labour offered to forego the election, W. M. Hughes suggesting the withdrawal of the formal proclamation dissolving Parliament, a strictly unconstitutional procedure which he felt could be validated by the Imperial Parliament passing an Indemnity Act. The anti-Labour Government of the day (no doubt to its bitter regret in the event) properly refused such a proposal for outflanking the constitutional limitations on Parliament's autonomy. Another proposal to use the Imperial Parliament, this time apparently to circumvent the Australian popular will, was made by Sir William Irvine in February, 1917. Governor-General Munro-Ferguson wrote that Irvine "suggested to me in private that the Imperial Parliament might very properly have decreed conscription after its defeat by Referendum."[6] Even in 1917 such an idea was simply a pipe dream. Section 9 (3) of the Statute of Westminster now requires a request for legislation from the Imperial Parliament to be made by both Houses of the Commonwealth Parliament.

While there has been a general acceptance of these constitutional limitations on the freedom of action of the Commonwealth Parliament, there has, on the other hand, been wide and influential championship of the status and powers of Parliament as against lesser institutions. In 1918, for instance, Prime Minister Hughes, for reasons of his own, wished to delay announcing his recommissioning as leader of the Government until just before an impending Party meeting. The Governor-General, however, insisted on the proper course of action in these terms:

> "I would strongly urge that the announcement be made in Parliament, and that for the following reasons. I have taken my stand on the absolute pre-eminence of Parliament, and on my inability to recognize party exigencies, or to have official cognizance of any happenings or utterances outside the parliamentary arena. Therefore, to allow Parliament to meet after a commission has been granted, and to allow it to remain in ignorance of this important fact until a party meeting has been given the information, is to ignore the principle on which I acted in granting you a commission. I would, therefore, strongly advise that you make the announcement in Parliament, whose supremacy it has been my object to vindicate."[7]

Though the Constitution limits Parliament's powers to order its own affairs, it specifically leaves many matters open for Parliament itself to determine.[8] Thus the Constitution gives Parliament control over the qualifications of electors and Members of the Commonwealth Parliament. The Constitution also makes a provision that Parliament should have power to vary the numbers of either House; though Section 24 lays down that, whatever the absolute numbers of Representatives and Senators which the Parliament may determine, the number of Representatives "shall be, as nearly as practicable, twice the number of Senators."

II

There is reason to believe that this provision in Section 24 may alone have prevented the increase of numbers in the House of Representatives which is so patently necessary. It is not simply that the population has doubled, and the populations of some electorates actually trebled, since the Constitution fixed the number at 75. Nor is it simply that the geographical size of some constituencies was already excessive—the area of the electorate of Kalgoorlie, Western Australia, is many times the size of Victoria and reputedly the largest single-member electorate in the world. Nor is it merely that the Australian House of Representatives is so much smaller than any comparable House abroad. Nor, again, is it desirable, as has been argued, to increase the number of Representatives primarily in order to enhance the depressed status of Senators.

The real reasons for an increase of Representatives lie in another direction. First, quite apart from any actual increase of Commonwealth powers by referendum or judicial construction, the present is in any case an age of vastly increased governmental intervention in and control over social, economic and personal life. This in turn means that there are vast increases in delegated legislation by regulation, in governmental expenditure of public funds, and in Cabinet power which require to be watched by Parliament as a whole. In practice there are too few Representatives or Senators left to keep vigil over the people's liberties and interests after nearly twenty Ministers and Party Whips, a Speaker, Chairman of Committees and their deputies have been drawn from a House of 75 and a Senate of 36. There is too little widely informed debate, too little effective committee work, insufficient regular parliamentary check upon public expenditure and delegated legislation, too much notoriety and power for the three or four Members who so often hold the balance of power, and too restricted a choice of able and experienced Members for places in the ever more important Cabinet. Cabinet itself has increased from eight to nineteen in strength of numbers since the first decade of the

century without any increase in size of the Houses from which its members are drawn. And since the first duty of the House, in order of importance, is to provide and sustain a Government for His Majesty, this last reason for a numerically stronger House probably ranks first.

It is urged, moreover, that in a larger Parliament private Members would be of more account, would enjoy greater freedom from narrow party discipline, and would make wider and more effective contributions to the work of Parliament:

> "The House of Commons contains over 600 members. This permits the presence of a large number of men of independent mind, who specialize in things in a detached way, and many of whom specialize in certain subjects. This is not possible in a small House. Every vote is so important that it must not be allowed to stray too much from the narrow path of party.9 .... I feel very strongly that the efficiency of any system of responsible government on the Cabinet system is impaired by too small a House, and that it is only workable in a House of 150 members or more."10

Members on both sides of the House of Representatives, party conferences, academic authorities and the informed public have all long acknowledged the force of these arguments. But, under the Constitution, if the Representatives were increased to 150, the Senate would have to be increased to at least 72. Few have ever suggested, in the light of its performances, that any increase in the Senate's size is either necessary or desirable. Yet only an amendment of the Constitution would permit of the one increase without a proportionate increase in the Second Chamber, to whose ultimate abolition one major party is at least formally pledged. So long as it places an obstacle of this sort in the way of increasing the size of the House of Representatives, Section 24 of the Constitution will continue to be a brake on parliamentary efficiency and effectiveness.

Meanwhile the small numbers of both Houses make for a certain intimacy and informality by comparison with the American legislatures and even the British House of Commons. The Speaker of the House and the President of the Senate in particular, and the Members generally, have had to adjust the traditional tempo and procedure of the British Parliament, and their own formal relationships in the Chambers, to this special condition of work in the Australian national legislature. There is, however, an optimum even in the matters of intimacy and informality where legislative bodies are concerned; perhaps the Commonwealth Houses exceed that optimum.

III

Subject to such qualifications as have already been noticed, Section 49 of the Constitution gives Parliament autonomy as regards the "powers, privileges and immunities" of its own

members.[11] The Houses meet under the Speaker of the Representatives and the President of the Senate respectively. Each of these officers is elected by his House, ordinarily from amongst the majority party, at the beginning of a Parliament. Once elected he continues in office throughout the life of that Parliament unless he loses the confidence of the House, resigns his office, or ceases to be a Member.

From the first the Speakers and Presidents have jealously guarded their independence of the Crown as spokesmen for their respective Houses:

> "At the opening of the first Parliament, the Governor-General directed the Senate and House to choose a President and Speaker respectively, and indicated that he would appoint a time and place for the persons chosen to be presented for his approval. The President and Speaker duly waited on the Governor-General. The President of the Senate reported that he had received His Excellency's congratulations, and that His Excellency had at the President's request confirmed the usual rights and privileges of the Senate (Senate Journals, 1901, pp. 3–4). The Speaker of the House reported merely that he had received from His Excellency an expression of pleasure at and confidence in the choice of the House (Votes and Proceedings of the House, 1901, p. 9). At the Second Parliament, in 1904, a ceremony more strictly in accordance with the Constitution was adopted by the Governor-General and both Chambers. The President and Speaker were 'presented' but not 'for the approval' of the Governor General; and the prayer for the 'allowance' and the Governor-General's 'confirmation' of the 'usual rights and privileges' were abandoned."[12]

The Speaker, then, is the guardian of the "rights and privileges" of the Members of the House. He presides over the House, giving rulings in debates; deciding the order of speaking, questioning and bringing of motions; seeing that the minority parties and the private Members receive fair play at the hands of the prevailing majority. For the rest, he ensures that the business of the House is despatched with speed and propriety. He receives the active assistance of party leaders and party "whips," as well as of Members generally, in the discharge of his duties.

In the British Parliament the Speaker was long afforded electoral immunity, in acknowledgment of his official impartiality, and has ordinarily held office as long as he lived or felt equal to his task. In Australia the Speaker has normally changed with the Government—a fact which has placed additional responsibility on the Clerk of the House, who has to coach a correspondingly rapid succession of new Speakers in their duties and responsibilities. Nor has the Speaker enjoyed electoral immunity, it being argued that it is unreasonable to disfranchise a whole electorate by leaving the Speaker unopposed—and, further, that every seat is too precious to go uncontested when there are only 75 anyway. In the Australian

Parliament, under stress of war emergency, one Speaker (Rosevear) has even carried on simultaneously the administrative office of Controller of Footwear—probably an unprecedented occurrence, which was ultimately terminated when attacks upon him in his second (executive) office threatened to embarrass him and undermine the traditions associated with his high parliamentary office. Nor is the Speakership necessarily the summit of a Member's parliamentary career in Australia: Norman Makin, for instance, subsequently held Ministerial posts in Labour Cabinets.

It is usual for the British Speaker to refrain from voting in Committee of the House, but some Australian Speakers have insisted on doing so, arguing that their constituents should not go unrepresented nor their parties in want of a majority in vital divisions. Sir Elliott Johnston, when Speaker, several times saved the Government in 1913–14 by joining in Committee divisions. On June 21, 1943, the Leader of the Opposition gave notice of a motion of "no-confidence." The same day the Speaker and Chairman of Committees relinquished their positions. They belonged to the Opposition parties and had, in the special circumstances of an evenly divided House and an unparalleled war crisis, continued in their positions eighteen months after their own parties had left office. Theirs was an unusual position—but so were their resignations extraordinary. Their action—and particularly that of the Speaker—drew stiff criticism from traditionalist circles inside and outside Parliament:

> "The Speakership lies not in the gift of any party or parties. It is an office bestowed by the House. It is not a political job, and the holder of the office fails to distinguish his duties and stains the traditions of the Speakership in measure as he makes it a stalking-horse for political manoeuvre.... According to his own words, Mr. Nairn has tendered his resignation because a motion of no-confidence has been submitted. He does not wait for the House to declare whether or not the Government possesses the confidence of the House, but he declares that his tenure of the office of Speaker is to be governed by the wishes of his party. This abject confession of subservience in his office to the decision of a political party and of departure from the impartiality of a Speaker in anticipating (perhaps wrongly) the decision of the House is a blot on the record that has been written by the words and deeds of Speakers of the House of Representatives through four decades of the Commonwealth."[13]

Sir Littleton Groom, on the other hand, adhered to the British tradition when the Government of the day was hard-pressed on the Arbitration Court Amendment Bill in 1929, with the result that the Government (to whose party he belonged) fell. His party, in bitterness and retaliation, opposed another candidate to him at the ensuing general election and secured his defeat.

It is the business of the Speaker to interpret and apply the Standing Orders of the House (drawn up and reviewed by a Standing Committee of Members)—rules which govern debate and other phases of the business of the House in a very detailed way. Until the House and the Senate brought down their own Standing Orders in 1903 both Houses used the Standing Orders then current in the State Parliament of South Australia, to which the first Speaker and the first Senate President had both previously belonged. The Standing Orders are liable to continual review and by 1937 had grown in number to 410 (at the same time the Senate had 450). Occasionally a ruling of the Speaker is successfully voted down—as on September 10, 1937, when on the motion of the Prime Minister himself a vote on party lines nullified a ruling from the Chair and the Speaker simply had to abide by the will of the House. Behind the Standing Orders of the Australian House of Representatives are those of the House of Commons and the rulings of the British Speakers as collated and set out in successive editions of May's "Parliamentary Practice."

IV

There are new Members entering Parliament and there are other men who fortunately never attain the necessary status, who express themselves impatient of or opposed to the deliberateness of parliamentary routine procedure. Yet almost without exception those who come to Parliament sceptical or critical remain to praise:

> "After being a Member of this Chamber for eleven years, I have come to realize that standing orders are necessary. At first I thought that some of them were unjustified, but I have come to the conclusion that standing orders are required, and must be obeyed, in order that the business of the Senate may be conducted with proper decorum, with all possible speed, and with fairness to all honourable Senators. The *Standing Orders have been developed over the years as the result of the* experience of honourable Senators in this Chamber."[14]

"The four hundred Standing Orders, singly and collectively, constitute a guarantee that debate will be fair, free and adequate yet expeditious. The fair and deliberate consideration which the Standing Orders ensure in the long run usually saves the nation, or at least some members of it, both time, money and hardship. This is the seeming paradox which escapes those who complain loudly of "expensive talking shops."

In the early years of the Commonwealth Parliament, due largely to the frustrations arising from the co-existence of three mutually hostile parties in the House, there were serious cases of obstruction and disorder. These reached their climax in 1905 when George Reid's Conservative Free-Traders were nursing

some smarting grievances. The Reidites stonewalled against the passage of the Commerce and Trade Marks Bill to such an extent that "the fight nearly killed the Opposition Whip, Mr. Wilks, who had to take to his bed seriously ill owing to the strain of the stonewall."[15] Deakin (Prime Minister) had to postpone further debate to bring down Standing Orders to handle the situation. When he sought the adoption of a Standing Order (on the British model) providing for the "Closure" the House debated the motion non-stop, except for meals, from Thursday afternoon, night and day, until midnight on Saturday. The Reidites made speeches of two, three and four hours each and would quite doggedly have gone on into Sunday, it is said, but for the strong sabbatarian views of the Speaker, Sir Frederick Holder. The House has always since been able to apply a time limit to speeches, though it has not always done so. Thus in a debate on a motion of no confidence in the "Fusion" Government, beginning on June 24, 1909, Webster for the Opposition made a speech extending over two sittings and occupying ten hours. Some twenty Opposition Members participated in the unofficial filibuster on that occasion. Nor were Members always temperately behaved. The first Speaker, Sir Frederick Holder, collapsed and died at the height of a veritable uproar during an all-night debate—he died protesting, it is related, at the degree to which the House had got out of the hands of the Chairman of Committees. From time to time a Member is suspended for offending the Chair or the House—rarely for more than a sitting. Speaker Bell went so far as to suspend a Minister—A. G. Cameron—on one occasion.

The "Closure" Standing Order, as adopted in 1905, provided that on the motion for closure being supported by a majority of a House of not less than 24 the vote should immediately be taken. It was also provided that the House might resolve at any stage that a Member be no longer heard or that the Speaker or Chairman leave the Chair, it being obligatory on the presiding officer to put these motions immediately.[16] Such an order could, of course, easily become a real menace to free discussion and to the rights of minorities to be heard. No Government, however, would deliberately set up a precedent for its successor of unscrupulous use of such weapons. Nor would the electors kindly regard a party which used its majority for such a purpose.

But in these and other ways Parliament has power to cut to reasonable duration proceedings which, otherwise, can stretch to inordinate lengths—as did, for instance, a "no-confidence" motion debate which commenced on September 20, 1904, and continued through 15 sitting days over the next four weeks.

Parliament does not hesitate to use powers to cut short debate when no injustice is thus occasioned, recognizing frankly that "the power of organized minorities to check good executive

action often amounts to blackmail."[17] Yet from the beginning it has been true that neither personal nor recurrent party bitternesses prevent the making of arrangements "behind the Speaker's Chair," or elsewhere, to facilitate the processes of government—witness the Reid-Deakin agreement on the fiscal truce (actually committed to writing and subsequently made public),[18] or the normal day-to-day arrangement of the business of the House between party leaders and "whips" of Government and Opposition. "Thus to settle peacefully conflicts of interest that might be fought to the death is civilization; to do it gracefully on the basis of equality is democracy; to do it with good humour and mutual regard is magnanimity."[19]

If parties and Members can be garrulous (a Senator once referred to Australian government as being "of the gullible by the garrulous") they can also on occasion use silence as effective tactics. When Parliament met on June 10, 1925, after what Labour regarded as an inexcusably long recess of eight months, no Labour man rose or could be induced to rise to debate the Governor-General's speech and the address-in-reply. Prime Minister Bruce, from begging Labour to talk about anything, had to beg his own side to keep the debate open: the fact was he had no Bills fully prepared for submission to the House and Labour found in embarrassing him by their silence a more eloquent and telling form of protest than any which could have been framed in words.

When they do speak in Parliament, Members are free to say practically what they will (provided they say it in moderate language), without fear of the laws of libel or defamation. The language is sometimes picturesque as such an outburst as this of the redoubtable W. M. Hughes against Alfred Deakin well illustrates:

> "God save us from such friends. Last night the Honourable Member abandoned the finer resources of political assassination and resorted to the bludgeon of the cannibal. Having, perhaps, exhausted all the finer possibilities of the art, or desiring to exhibit his versatility in his execrable profession, he came out and bludgeoned us in the open light of day. It was then that I heard from this side of the House some mention of Judas. I do not agree with that; it is not fair—to Judas, for whom there is this to be said, that he did not gag the man whom he betrayed, nor did he fail to hang himself afterwards."[20]

Extreme freedom of parliamentary speech and criticism is a privilege inherited from the British Parliament. It is a privilege held by Members, not for themselves as individuals, but by virtue of their offices as representatives of the people. One commentator puts the position this way:

> "The Cabinet lays down the policy and administers through a vast and growing bureaucracy, the back-bencher represents the individual, for whose sake the Law is passed, but on whom, time after time, the law and its administration imposes a hardship or injustice, which can

only be remedied by Ministerial intervention. The more Socialism we get, the more we shall need a throng of active, sympathetic back-benchers, representatives of the individual against the bureaucratic machine.''[21]

In some degree abuse of privilege is prevented by the Speaker and the House, who can exact a withdrawal of remarks from a Member, on pain of ''naming,'' excluding from the Chamber for the duration of the sitting, or suspension for a longer period. In recent years there have been recurrent complaints that abuse of privilege (at the expense of persons outside Parliament) was alarmingly on the increase. Thus, in 1937, Attorney-General Menzies was reported as favouring provision that:

> ''(1) When an M.P. made an offensive statement and subsequently withdrew it, the offensive statement should not be recorded in Hansard, and its publication in the press should be prohibited.
> (2) When an offensive statement was made and upon challenge was not withdrawn, no parliamentary privilege should attach either to the making of the statement in Parliament or to its publication in the press.''[22]

Parliamentary and press outcries caused the Attorney-General to withdraw these ideas. But the problem is a real one, as yet unresolved. More recently a milder remedy was suggested—a standing order in some such terms as these:

> ''No member shall have the right to ask a question without notice affecting the personal reputation or character of an individual not a Member of the House. Questions in this category are to be asked on notice, and are not to appear on the notice-paper until answered.''[23]

As recently as July, 1948, a Royal Commissioner, Mr. Justice Lowe, upheld parliamentary privilege when counsel for the then Minister for Labour claimed that his client was not accountable to the Commission for statements made in the House. In 1944 provision was made for a Committee of Privilege to be set up by each new Parliament shortly after assembling. Broadcasting of parliamentary debates makes the privilege problem all the more acute.

The question of censoring Hansard (especially in wartime) has sometimes proved a difficult one, but a clear ruling has always been given on the matter. Speaker McDonald held during the First World War that:

> ''Nobody has any authority to censor anything that takes place in this Chamber but the House itself. No alteration of any kind is permitted in 'Hansard' unless it is one that I would personally sanction, and I would not censor anything that takes place in this House except by direction of the House itself.''[24]

At the beginning of the Second World War this was reaffirmed by Speaker Bell:

> ''There will be no censorship of Hansard without the authority of this House.''[25]

There is a precedent for Parliament taking cognizance of what a Member says outside the House as a basis for disciplining him. On November 11, 1920, Prime Minister Hughes took the extreme action of moving for the expulsion from the House of Hugh Mahon, a former Minister of the Crown, for a speech he had made against British policy in Ireland. This was carried, as was the motion that his seat be declared vacant.[26] That would appear to be a precedent, however, which could be well forgotten. It represents almost certainly the Commonwealth Parliament's record for illiberalism.

Both the House and the Senate have, on occasion during war, gone into "secret session" to hear and debate matters which in the interests of national security should be debated by Parliament but should not be debated in open session. As against secret sessions of each House, Senators have shown preference for extraordinary (extra-constitutional) secret joint "meetings" of the two Houses, as affording them an opportunity of meeting and debating with all the members of Cabinet. On these secret sessions and secret joint meetings "Hansard" is silent and Members are in honour bound to secrecy. While recognizing a case for such secrecy the interested public does not relish it. As Sir John Hall reminded the 1890 Australasian Federation Conference in Melbourne, democracy demands that the government should be conducted within the sight and the hearing of the people.[27] Sir John was representing New Zealand on that occasion and it is not without interest that it has been New Zealand which has pioneered the bringing of Government at least within the hearing of the people by providing for the broadcasting of parliamentary proceedings. The arrangement made covered all important debates—time is divided very fairly and the nation is able, as it were, to enter the public gallery to follow proceedings. In 1946 the Australian Parliament followed suit.

Of all the rules and standing orders of the Houses of Parliament, it is true that few, if any,

> "....have any direct, or even obvious and indirect, sanction. They are followed because they are part of the tradition, because they are reasonable, and because they are essential to the working of a democratic system."[28]

Beyond the written rules are many unwritten rules or conventions. One of the most commonly used of these is the provision for "pairs"—whereby a Member of one party who is ill or unavoidably absent from the House arranges through the Whips or privately that a Member on the opposite side of the House will refrain from voting in divisions during his absence. When party strengths are practically even such arrangements (there are sometimes as many as six or eight pairs at a division) may

alone save a Government from defeat. If a Member or the Opposition as a whole does not want to embarrass or defeat the Government it will on occasion arrange deliberately for one or more of its Members to be absent unpaired, but such occasions are rare. On the other hand, the Labour Opposition of 1913–14, which had exactly the same numbers as the Government (37–37) several times refused pairs and in that way was able to obstruct Government business. But such a practice, even occasionally indulged in, over a period would most definitely harm the whole institution of parliamentary government.

The multiplicity and, to the new Member, complexity of Standing Orders, conventions and procedures is one of the reasons why leadership of both sides of the House is normally vested in men with many years of parliamentary experience. The Bruce-Page Cabinet was led by two men with relatively short parliamentary and ministerial experience. Lack of familiarity with all the "rules of the game" can be a serious failing. This is particularly true of recent times when Governments have become used to taking a firmer grip on the business of the House. W. M. Hughes was not altogether imagining a Golden Age when he wrote:

> "The business of Parliament in the early days of Federation was controlled by its Members to a very much greater extent than nowadays. The legislature was then a deliberative body, decisions were arrived at after questions had been thoroughly debated. Members took their duties very seriously, speeches were carefully prepared, authorities consulted, and every question considered on its merits. Parliament was then the supreme authority in something more than name, and not, as too often occurs in these days, a mere machine for registering Government decisions. The times were spacious, parliamentary business moved with leisurely and even tread. Measures were not rushed through Parliament without time being given for free and full discussion. These modern, time-saving devices, limiting speeches, guillotining debates, were unknown."[29]

But so were modern administrative pressure, the modern scope of Commonwealth functions and general governmental activities and the whole modern tempo of public affairs.

Even so, twenty years of experience in the often turbulent colonial legislatures stood Government leaders like Reid and Deakin in good stead in "managing" the early House of Representatives. More recently Government management of House business has called for alert shrewdness from all senior Ministers. In the House, knowledge of the rules of the game is indispensable to victory and careful timing not infrequently gains the day. The sort of team-work which succeeds in management of the House is described, for instance, in this report:

> "In getting the budget legislation through the House the superiority of Labour's teamwork over that of the previous Government was demonstrated. In the Menzies Government a Minister had to get his

> Bills through the House without assistance from any other Minister, and sometimes the position was anything but edifying. But when the Treasurer (Mr. Chifley) produced his string of taxation Bills he had a Minister (Mr. Lazzarini) to assist him, with the Rt. Hon. J. H. Scullin—the greatest authority on taxation legislation in the Parliament—at his elbow, and the Attorney-General (Dr. Evatt) on call to deal with any legal issues. It was good teamwork, which gave the Bills a smoother passage than the majority of taxation proposals receive.'[30]

Not only was John Curtin an able organizer of the House in this way, but, even more important in the face of the hostile Senate majority which confronted him throughout his first Parliament as Prime Minister, he usually handled inter-Chamber crises consummately. The Private Member can of himself have little importance and no initiative in this side of parliamentary activity.

V

In the Australian National Parliament legislation has originated with the Government almost as completely as have money measures, though there is no comparable constitutional reason why this should have been so. The Commonwealth had been in existence almost five years before the first Private Member's Bill[31] passed into law, a year after its introduction. Perhaps the most notable of the few Private Member's measures which have become law was the Commonwealth Electoral (Compulsory Voting) Bill of 1924. In 1939 the Supply and Development Act Amending Bill was placed before Parliament by the Leader of the Opposition and another member of the Opposition Front Bench and became law.[32] It would appear that in practice Private Members of the Commonwealth Parliament have as often tabled a motion asking for legislation as they have introduced the legislation itself—John Curtin, for instance, on December 6, 1934, moved a request for improved social legislation and proceeded to outline in some detail for the Government's consideration what he had in mind.

A variety of reasons has been put forward in explanation of the paucity of Private Member's legislation. Historically, the first few years of the Commonwealth Parliament's legislative work were so much taken up with the passage of the basic statutory framework essential for the peace, order and good government of the new Federation that no tradition of Private Member's legislation had a chance to be established. Constitutionally, most of the likely subjects of Private Member's Bills fell within the ambit of the State legislatures.

It has been contended that in Australia the latter-day Private Member's capacity and willingness to study questions at issue, out of which his personal legislative initiative might emerge, is

not, on average, as great as that of his counterpart of fifty years ago. This may be simply a manifestation of the perennial human dissatisfaction with one's own age and generation. Certainly in the first decade of the Commonwealth David Syme was already casting the same nostalgic glances backwards:

> "There were, in our earlier Parliaments, men who had made a study of certain public questions and who were accordingly listened to with respect. It was not customary in those days for Members to repeat one another's speeches, to run an argument to death. There was less play and more work than at present. Members did not then learn to become expert billiard players by constant practise on the Parliamentary billiard tables. If not in the Chambers Members were sure to be in the library, unless absent from the House."[33]

In fact there has always been a fairly solid nucleus on both sides of the House with long parliamentary and some administrative experience, from which a proportion at least has acquired the specialized knowledge in particular fields from which Private Member's legislation might be expected to spring. So, for that matter, had the first Commonwealth Parliament, amongst the seventy-five Members of whose House of Representatives there were ten former Colonial Premiers, twelve other former Colonial cabinet ministers, fourteen members of the 1897–8 Federal Convention and, in all, 58 men who had formerly been Members of Colonial Parliaments. The total of seventeen without any previous parliamentary experience is not significantly different from that of subsequent Commonwealth Parliaments. It is true that in 1901 there was not the same pressure of electorate affairs upon Members—electorates were numerically much smaller; pressure groups were fewer and less well organized; government had not such an all-embracing impact upon personal economic and social life; there was practically no Commonwealth "bureaucracy" in the modern sense. If the tradition of Private Member's legislation did not emerge then it seems hardly likely that it would or should now.

Actually the whole status, and in some degree the functions, of Private Members have changed in the course of the 20th Century in all British Parliaments. Elections have tended to become, in the minds of voters, a plebiscitary choice of Prime Minister and Party, rather than of individual representatives. The Private Member still represents his electors but he is very much the Party Member, linked and committed first and foremost to the platform, general tendencies and collective decisions of his Party, upon the acceptability of which, rather than for himself, he has been returned to Parliament. This development has, of course, been hastened by the clear-cut class basis of modern parties in most British countries. Nor is it necessarily a matter for regret. The frequently confused state of the parties in the United States Congress is as inconceivable in the context

of British 20th Century parliamentary institutions as would be a return to the state of affairs existing in the British Parliament in the first half of George III's reign, of which Earl Russell said:

> "*Party has no doubt its evils; but all the evils of party put together* would be scarcely a grain in the balance, when compared with the dissolution of honourable friendships, the pursuit of selfish ends, the want of concert in council, the absence of a settled policy in foreign affairs, the corruption of certain statesmen, the caprices of an intriguing court, which the extinction of party connection has brought and would bring again upon this country."[34]

There is to-day a very real applicability in Morley's reply to Wedgwood when the latter as a new Member asked, "What can we do if we have no chance to bring in Bills or move resolutions?" to which the veteran replied, "The function of a Private Member is to popularize in the country the policy of his Party."[35]

From the point of view of the elector, however, Parliament has tended to revert from its great 18th and 19th Century character as active and detailed legislator to its earliest role of seeker of redress of grievances in return for the voting of Supply to the Crown. The Private Member has not simply to seize the many opportunities which parliamentary business daily presents for the airing of grievances and the seeking of redress on behalf of his electors, he must take up with Ministers and Departments dozens of individual cases for every one he can bring forward in the House. This American comment applies equally well to the Private Member of the Australian House of Representatives:

> "*The Congressman fills a great human need. He is the link between* the people back home and the vast impersonal bureaucracy of Washington. When a citizen gets hurt by some government agency's slackness or arbitrary action, or gets caught between the conflicting orders of two agencies, his Congressman is the influential 'man from home' to whom he can appeal. The job cannot be delegated to any non-congressional agency, because it is the Congressman's power over laws and appropriations that gives him his influence in bureau affairs."[36]

It is on account of the pressure of this side of their work that Australian Members of Parliament in 1945 were granted secretarial assistance at public expense. The Private Member is, however, increasingly by-passed by the various nation-wide economic and social pressure-groups whose spokesmen have established a practice of direct Ministerial approach.

One of the crucial issues for the future of Australian parliamentary government arises from this trend in the functions of the Private Member. If his role is to become more and more burdened with the necessity of righting grievances and stirring up "bureaucrats," will sufficient men of sufficient ability undertake a parliamentary career? Unless they can be induced to do

so, not only will the standard of parliamentary membership fall, but parliament will no longer have an opportunity to provide apprenticeship for a succession of men capable of leading Ministries and guiding the nation in the great tradition of parliamentary government.

VI

If the role of the Private Member in the Chamber has been diminished by recent tendencies, that of the Parliamentary Opposition has been increased and its methods developed. The institution of "His Majesty's Opposition," with all that it implies in terms of mature democratic achievement, was inherited ready-made by the Commonwealth Parliament at its inception. In the British Parliament it had emerged between 1688 and 1832 and had defined and established itself firmly in the years 1832 to 1874. Finally, the British Cabinet crises of 1873, 1880 and 1885 produced something of a crystallization of the conventions and principles which had slowly evolved.[37] These principles and conventions had been adopted and adapted in the Australian Colonial Parliaments from the 1850's and the great majority of the Members of the first Commonwealth Parliament were well versed and practised in them.

The intimate interdependence of Executive and Legislature in the British form of parliamentary government affords a dramatic excitement largely lacking in the polarized American system and a sharpness of outline which the kaleidoscopic manoeuvre of the Chamber of the Third French Republic used to blur. The Official Opposition plays a leading part: its main functions are twofold. The Opposition is the ceaseless critic of and the immediate alternative to the Government of the day. Its business is first by criticism in and out of Parliament to turn out the Government as a preliminary to installing a Government of its own leaders and keeping them there by every means constitutionally in its power. As the shrewd British parliamentarian, Sir James Graham, long since put it:

> "The possession of power in our popular government is the sole object of political warfare.... It is not in human nature that a great party can be kept together by the abstract hope of checking the misconduct of a bad administration, in the absence of the fixed purpose of displacing them.... Let it once transpire that you are afraid to take the government and your party is gone."[38]

There is, moreover, a lasting wisdom in the proposition that "a series of new initiatives, continually renewed, is the best source of the permanent statesmanship of the nation."[39] The system ensures that the people's rights and liberties are safeguarded by the provision that between the turning out or the

conclusion of the regular term of a Government and the assumption of office by a successful Opposition there is ordinarily an election. To be successful a party must therefore have a record of responsiveness to public opinion.

To win power it is consequently insufficient for the Opposition to score debating points, or simply to take the offensive indiscriminately in Parliament. The history of the Commonwealth Parliament shows how rarely division votes are actually swayed by parliamentary discussion alone. On those rare occasions when a Government has fallen on the floor of the House, the defeat has been immediately occasioned rather by the culmination of internal dissension in the Government party or some extra-parliamentary happening than by anything transpiring in debate. Usually, as regards any party's legislative programme, "the principle has been affirmed or rejected in the electoral process which put some men in a majority and others in a minority."[40]

Yet convincing, publicly-backed criticism by an able Opposition may bring the Government half way to meet it with amendments, or with changes of emphasis in measures before they reach the floor of the House. These changes in all probability come as much as the result of representations from Opposition leaders (and interested State Governments and public and private groups) outside the Chamber as from debate within it. But with a good case much can be effected by hammering away at question-time, on the adjournment, and in general debates like those on the Budget and the Address-in-Reply. Even the most confident Government will soon notice that this technique, applied to a case with substance, will raise up a growing volume of public criticism of proportions which cannot be ignored.

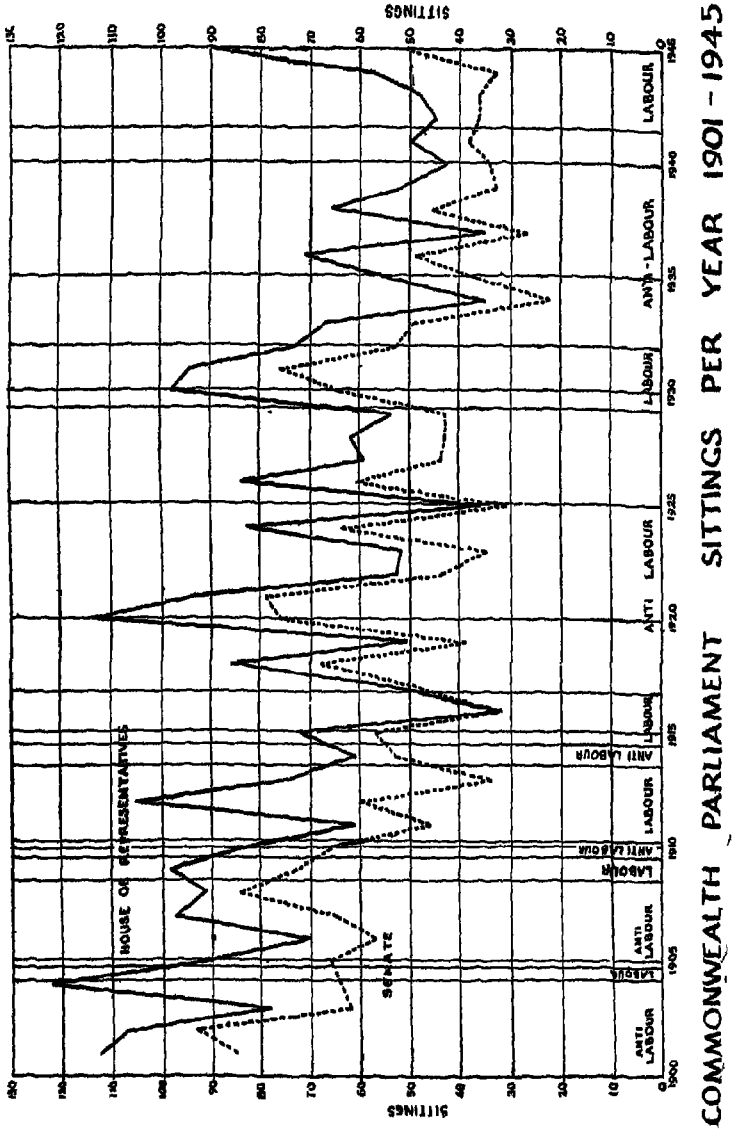
The House is "a forum for criticism and a focus of outside opinion," it is the Opposition's job to bring that criticism and those opinions fully to bear, to induce modification of Government policy or to oust the Government from public favour. If press and radio sincerely and honestly assist, the electorate is educated by the processes of parliamentary and extra-parliamentary debate initiated by the Opposition. If the Opposition [illegible]tself out of touch with public opinion it will neither prevail [illegible]on the Government to modify its policies nor prevail over the Government in the struggle for power.

The Government must be sensitive to genuine parliamentary criticism grounded in keen public feeling, for the turnover of a few hundred votes in four or five "unsafe" seats may mean all the difference at the next election. Even giving the appearance of impatience at Opposition criticism in the House may do that. "No matter how great the Government's effective majority, it can be compelled to give way to a combination of criticism in the House, complaint in the lobbies, and agitation outside."[41]

In Australian federal politics, party meetings and caucuses have become powerful media for bringing this public criticism effectively to bear upon Governments. The National Health and Pensions Insurance Act (1938) is a case in point. Even after passage through both Houses that measure never became operative. Not only had the Opposition been critical, but sections of opinion, inside and outside parliament, usually behind the Government, were sufficiently critical and sufficiently powerful to make the Ministry postpone proclamation indefinitely. It is, of course, not merely the Houses which cast eagle eyes over each new draft Bill, but also interested Government Departments, and above all, the interests outside which may be affected. It is sometimes hard to say which of these is the most zealous scrutineer and critic.

It is, naturally, a major obligation of the Government to give full opportunity to the Opposition to perform its functions. And Governments customarily fulfil this obligation. To do so is the essence of constitutional behaviour. As the American observer, Lowell, put it: "The members of the two Front Benches are in a position similar to those of barristers representing the parties to a suit in Court. They are not carrying on a civil war for life or death, but are conducting a case in accordance with the amenities of the profession, and these amenities are as little appreciated by the world at large as is the etiquette which prevails amongst lawyers."

There are, of course, contrary pressures always at work to cut short debate and criticism. The modern Cabinet is working under enormous pressure and from choice would leave its members as free as possible for purely administrative work. Busy men will always fight shy of the hours of seeming irrelevancies and redundancies which are interspersed in each sitting's debates. Yet even Ministers preoccupied with administrative pressures agree, in their more detached moments, with Sir Isaac Isaac's view that " there is the growing necessity of Parliament's exercising, not less, but greater and more constant vigilance and greater care to maintain in its own hands the power to fulfil the trust to the nation that the Constitution contemplates, tradition and commonsense alike dictate, and that every elected Member impliedly undertakes."[42] For there is general awareness that in the democracies "a powerful Executive may so sweep a legislature off its feet that fundamental liberties may become the creatures of executive discretion."[43] These are not arguments for hobbling the Cabinet. But the aphorism holds that "when Parliament is despised by men of Cabinet rank, it is not likely to be reverenced by anarchists." The problem of each generation—each decade, indeed —is so to adapt parliamentary procedure as to maintain its inherent democratic virtues while enabling the Executive to sustain the peace, order



COMMONWEALTH PARLIAMENT SITTINGS PER YEAR 1901 - 1945

and good government of a developing and hence a changing country.

Parliamentary procedure should still be designed to give the Houses in general, and the Opposition in particular, a maximum of participation in the legislative processes as well as in the presentation and consideration of grievances. And it is as important that Government Members should not be forced by too tight a party discipline to confine their airing of all criticisms and grievances to the privacy of caucus or party meetings as that the Opposition have a right to the floor. Question-time and the adjournment, the Address-in-Reply, Budget, Supply and Estimates debates, No-Confidence motions, motions for the printing of a paper or for a special adjournment—all are opportunities for general criticism. Rarely does a serious Opposition request for the debate of a current issue meet with refusal from the Government. While the First Reading, Report and Third Reading stages are rarely more than formalities in the Commonwealth Parliament, Second Reading and Committee stages of a Bill ordinarily give ample occasion for criticism of the principles and details respectively of current legislation.

While sympathizing with Sir Isaac Isaac's condemnation of the use of the "guillotine"[44] in the National Insurance Bill debate of 1938, it is impossible wholly to agree with his suggestion that "probably the 'guillotine' could be almost completely avoided if Parliament were more frequently assembled."[45] There are many other reasons why the Australian National Parliament should meet more frequently; there are also better methods than the 'guillotine' for keeping debate within manageable length without violating the principle that "the essential basis of legislation which is to bind all the people is that there should be free and as far as possible full discussion of all proposed laws."[46]

The "closure" and other curbs were adopted in the Commonwealth Parliament to check the inordinately long debates in those early, "ragged" days of a real three party set-up, when the shuffling of responsibilities and the succession of deadlocks led Watson to confess frankly to Henry Bournes Higgins in 1904 that "I despair of seeing any good come out of this Parliament, and feel that in the absence of any appeal to Caesar we can only mark time. It is distinctly better that Reid should be guilty of inaction than ourselves."[47]

Once Australia settled down to the two-party pattern, however, the "closure" became more liable to abuse, though in fact it rarely is abused. As early as 1909 there were protests at Deakin's use of it. But there are other means of abusing the rights of the Opposition. In 1919 when W. M. Hughes introduced the Constitutional Alteration (Legislative Powers) Bill

and asked that it be considered an urgent measure under the then Standing Order 262A, Tudor protested for the Opposition:

> "This is the first time Honourable Members have been asked to make an urgent measure of a Bill that one party has not seen. It is not treating Parliament fairly, and is quite an innovation. Probably Hon. Members on the Ministerial side are under the impression that they can bludgeon anything through Parliament."[48]

Again, in the midst of the Second World War, Prime Minister Menzies announced that for the rest of the then current sittings questions without notice would be restricted to half an hour[49]—at a time when the British Government had recognized the special need to safeguard the Commons' question-time.

Any undermining of the facilities afforded to the Parliamentary Opposition is a danger to parliamentary democracy itself, as John Curtin warned in 1938:

> "Parliament as a sounding board for the Federal Cabinet—that is how I see the trend in present-day parliamentary government. Sooner or later, unless the march towards that position is arrested, we shall see the Commonwealth Parliament merely as a register for Cabinet's views and decisions, to go out to the people through the press and radio, and then, in due time, to be given effect to (should the reaction be favourable) by legislative processes which themselves are rapidly becoming mechanized."[50]

Whether it is individual debates or the length and frequency of sessions which are cut short is less important. "The test to determine whether a government is democratic is not the extent to which the majority approves it, but the extent to which the minority is free to criticize."[51] Admittedly the field of the National Parliament is limited and even so some of the national powers are in effect delegated out of hand by the Constitution—notably to the Arbitration Court system. But even so, the National Parliament needs more than 35 sittings in a year (which were the 1934 and 1937 totals) to give itself, and in particular the Opposition, reasonable opportunity of functioning.[52] As early as 1905 a recess of six and a half months occurred.[53] The Bruce-Page Government met the House of Representatives on an average of 59 days a year between 1923 and 1929. Over a comparable period—1932–38—the Lyons-Page Government cut two days off even that figure. As usual the Senate met for still fewer sittings. These two Governments enjoyed, of course, secure majorities quite prepared to back them throughout most of their terms.

Tardiness in summoning Parliament and haste in sending it back into recess involve Governments in wholesale use of their majority to order and speed the business of the House. Thus in 1938, upon receipt of the formal message from the Governor-General, the Government proposed to suspend Standing Orders to pass the £10,000,000 Defence Loan Authorization Bill[54]

through all stages. This drew two protests from the Opposition: first, that the details of the proposed expenditure were negligible; and, secondly that the suspension of Standing Orders meant the elimination of debate on an important foreign policy statement just made by the Prime Minister. Such instances show not merely the need for accommodation on the part of the Government but also how delicate and potentially dangerous a machine is parliamentary government if its traditional spirit is not kept vigorously alive.

> "While Parliament does on occasion exercise its ultimate power of censuring the Executive Government, little machinery exists for securing parliamentary review of executive regulations of a general character, still less of a particular executive decision. The modern tendency to set up commissions and authorities outside the control of the Executive Government itself also operates to preclude effective action by Parliament. Not only does the party system help to prevent independent parliamentary review of executive action, but Parliament is often in session for not more than half the year, so that many executive decisions and regulations cannot even be discussed until months after they have been put into effect."[55]

As Governments assume more and more responsibilities, especially in the economic and social fields, it should become necessary for Parliament to have additional time and facilities to debate the reports of Government instrumentalities which are required by law to make regular reports, and the policy statements of Ministers made to Parliament in the course of the year. Yet, as a private Member once reminded the House in regretting the paucity of such opportunities:

> "The blame does not attach to Ministers alone. Hon. Members assemble here unwillingly and leave gladly.... That is one of the disadvantages which arises from having the Seat of Government remote from the large centres of population."[56]

This is a timely reminder of the private Members' own culpability but theirs is a secondary responsibility. The main onus must lie with the Government and in some cases notoriously does so. Thus when the Leader of the Opposition in 1938 requested the summoning of Parliament to consider the threatening international situation, Prime Minister Lyons declined and in explanation said:

> "If Parliament were called together undue anxiety would be created in the minds of the Australian people and this would lead to economic and other upsets."

(As the Prime Minister had a major Cabinet crisis on his hands at the time, the nature and gravity of the possible "other upsets" can be appreciated.) It was a member of the same Cabinet who, a month previously, under threat of legal action, had to apologize for a public statement that the Leader of the

Opposition, John Curtin, was "the sort of man who should be put up against a wall and shot." Neither of the attitudes reflected in the two statements here quoted contributes to the strengthening of the liberal traditions of parliamentary government.

At the same time it is to be recognized that while the Opposition must be given a fair share of time and an adequate number of sittings, astute manoeuvre by Government leaders during sessions can do much to blunt the force of Opposition attacks, while full grasp of tactics will enable the Opposition to press them more effectively. For there is a sense in which the Standing Orders can be legitimately exploited for party advantage consistently with proper observance of the spirit of the parliamentary game.

The Opposition has, however, a real obligation to use but not to abuse its role and privileges, to exercise its rights short of sheer obstruction or unreasonable use of the various parliamentary devices available to it. While its minority rights are reasonably respected it must in turn fully respect the right and duty of the majority to carry on the business of government. It is not without cause, for instance, that an observer raised his eyebrows when in 1913:

> "The declaration of the [Cook] Government's policy was followed immediately by a motion of censure submitted by Mr. Fisher, the late Prime Minister. Some surprise was felt that the Opposition, having resigned office after the general election without meeting Parliament, should have challenged the Government before it had really got to work in Parliament. But we are rapidly making constitutional precedents in Australia."[67]

One more aspect of official Opposition should be noted. The Opposition "Front Bench" or Executive is in fact a "shadow cabinet." It consists of ex-Ministers and men who can confidently look forward in the normal course of events to becoming Ministers with the next swing of the electoral pendulum. In some instances they actually tend to specialize in particular fields much as do Ministers themselves. On the whole, however, members of the Opposition "Front Bench" in Australia appear to feel rather less responsibility for at least some of their policy statements than do their counterparts in the British Parliament where there appears to be a stronger tradition that pronouncements in Opposition imply commitments, in some degree at least, upon assuming office.

So onerous is the position of Leader of the Opposition, and so indispensable is its efficient discharge to the healthy working of Parliament, that since 1920 in Australia it has carried an additional allowance of £400 (£200 in the Senate), together with secretarial allowances. During the Second World War,

when representatives of the Opposition Front Bench sat on the Advisory War Council, the Government paid for five secretaries and other assistance for them.[58]

VII

The fact remains that, with the increasing pressure of administration, Cabinet feels a certain impatience with the desire of Parliament generally and the Opposition in particular to scrutinize its every action. The fate of the former Committee of Public Accounts is symptomatic of a trend:

> "In 1913 the Federal Parliament passed an Act which was known as the Committee of Public Accounts Act, which Act was amended in 1920. The object .... was to appoint a Standing Committee in Parliament whose business it should be to examine the public accounts and report upon them to Parliament. It was a Standing Committee consisting of seven members of the House of Representatives and three members of the Senate.... The duties of the Committee were set out in the Bill:
>
> (1) To examine the accounts of receipts and expenditures of the Commonwealth and to report to both Houses of Parliament upon matters to which the Committee deemed the attention of Parliament should be directed;
>
> (2) To report upon the need for change, if any was considered to be required, in the form of the accounts;
>
> (3) To report upon the method of receipt, control, issue or payment of the public monies;
>
> (4) To report upon any specific matters referred to it or assigned to it by Parliament or the Government.
>
> Those terms of reference, if efficiently carried out, would have given and did give a very practical method of control of the financial administration, the revenue and expenditures of the Government. The Committee was invested with all the powers of a Royal Commission. It was entitled to call witnesses, to take evidence upon oath and to report for punishment by Parliament any recalcitrant witnesses.
> On October 13, 1932, the then Prime Minister, J. A. Lyons, introduced into the House of Representatives a Bill for the suspension of the Standing Committee of Public Accounts. His argument seemed plausible enough at the time. It was that there was necessity for the most stringent economy in public finance (an argument which was forgotten before many years), and the abolition or suspension of the Committee would save the country something less than £3,000 per annum. The debate on this measure lasted for some time, down to December 2, 1932, and that debate showed that some years previous to the introduction of this [suspension] Bill the work of the Committee had been steadily pared away and its usefulness ignored."[59]

The history of that Committee is interesting as illustrating not only the trend of resistance by the Executive to regular minute scrutiny of its administration by Parliament, but also

the difficulty of finding men qualified and willing to serve actively upon such committees after a Cabinet, Opposition Front Bench and other parliamentary officers (e.g., Speaker and Senate President) have been chosen from two numerically small Houses. For various reasons, personal or political, there are Members who are not prepared to serve on Committees.

Yet such a Committee as that just referred to is of enormous importance to Parliament's proper discharge of one of its major functions—the granting of supply and supervision of expenditure. For, whereas the Treasury and the Auditor-General cover in a detailed way with technically qualified staffs much the same ground and whereas the Auditor-General has power to comment publicly on the conduct of the nation's finances, a Parliamentary Committee could follow up its reports and press its informed criticisms on the floor of the House. As J. M. Nairn said in the debate on the Bill suspending the Committee of Public Accounts: "Finance is the essence of Government and if this Parliament is to do its duty properly it needs to maintain a body to exercise independent supervision of the country's accounts. In practice, Hon. Members pay little concern to such matters." The power of the purse is, after all, the final hold of the Parliament and, through it, of the people over their Government between elections. In this matter the Opposition in particular has a vital role which it must be allowed full opportunity to perform. This Committee was its best means of collecting the essential facts to use in that role.

While this criticism of the relationship of Executive and Legislature in the realm of public finance is sound, it is important in a study of Australian parliamentary government to notice that the development of certain federal aspects of the country's finances has also withdrawn from Parliament to Premiers' Conferences, Loan Council, National Works Council and Grants Commission the substantial and crucial decisions regarding a large sector of loan and expenditure policies.[60]

Actually the initial federal compromises written into the Constitution caused difficulties and uncertainties regarding parliamentary financial powers. Supply, for instance, for reasons to be found in the origins and federal nature of the Commonwealth, is a grant of both Houses of Parliament, a fact which the Senate in its early years was quick to insist upon. Over the Customs Tariff Bill of 1902 and the Sugar Bounty Bill of 1903 there was considerable debate and dispute regarding the respective powers of the two Houses. A degree of obscurity has remained and serves to make uneasy those who feel that there should be a clear-cut and exclusive responsibility lodged in the Lower House to control and supervise the national finances,[61] just as the Constitution vests in the Crown, under Section 56, a clear and exclusive initiative in financial matters.[62]

There can, at all events, be no disputing the basic responsibility of Parliament rather than the Executive for financial control, and any departure from that position has traditionally been regarded—with good cause—as of the utmost gravity. Thus on October 6, 1943, the Leader of the Opposition, R. G. Menzies, was moved to protest:

> "I think that a case has been made out for the reduction of the rate of sales tax from 12½ per cent. to seven per cent. in the cases mentioned; but I want to offer a few comments on the method by which this change has been brought about. In the first instance, Parliament itself passed the sales tax laws and determined what rates of tax should be imposed on various commodities. In July last, after the House had risen, and when we were getting ready for the general elections.... a change was announced by way of regulations. I do not recall any previous instance in the parliamentary history of Australia when a tax has been changed by a regulation, because one of the first principles, I believe, to which Parliament must adhere is the principle of parliamentary control of finance, parliamentary control of taxes, whether taxes are to be imposed or taken off. I am sure that all Hon. Members will agree that that is a very sound general principle. The last and most powerful control that Parliament exercises over the Executive is control exercised by means of the powers of the purse."[83]

Soon afterwards the same Government repeated its offence against this fundamental and traditional rule in restoring a cut in old age pension by regulation, which involved the incurring of expenditure without the approval of Parliament.

Traditionally it has been a first consideration of Members through at least three hundred years of British Parliaments that Supply be granted to the Executive for the shortest periods—certainly not more than twelve months—lest the Executive proceed to govern without summoning Parliament. Hence the essential requirement that the taxing power be exercised only through and by Parliament as a whole—as Section 83 of the Commonwealth Constitution insists, "by law."

The taxation power of the Commonwealth Parliament was limited by the constitutional necessity of exempting the property of the States from liability and of avoiding any discrimination between States and parts of States (Sections 114, 51 (ii) and 99). Otherwise its taxing power is general. Until 1910 the Commonwealth confined itself, however, to customs and excise duties, to the levying of which it had an exclusive right. But the mounting costs of national government, and to some extent the belief of the Labour Party in direct or graduated taxation, sent the Commonwealth Parliament into the fields of Land Tax (1910), Estate Duties (1914) and Income Tax (1915), where it had concurrent powers with the States. Thereafter entertainment, wartime profits, sales, pay-roll and social security taxes were imposed by the Commonwealth Parliament. Finally, in

the Second World War the Commonwealth Parliament temporarily adopted, and the High Court upheld, the Uniform Tax System, whereby the Commonwealth ousted the States from the direct taxation field and compensated them with grants approximating the revenue formerly derived from their own direct taxation. In 1946 Uniform Taxation was given a permanent statutory basis.

The financial year runs from July 1 to June 30. The Budget and Estimates are ordinarily brought down by the Treasurer in August or September (on occasion it has been later)—a cause for criticism in the opinion of some, who point to the much more prompt British procedure in making the Estimates available before the financial year commences and the Budget in its first month. Since, however, the British procedure does not clean up the Estimates and Appropriations until some three or four months of the financial year have elapsed the net result in point of time is the same, but in point of thorough consideration the British system admittedly is probably to be preferred. The Commonwealth expenditure of the period between July 1 and the passage of the Budget and Appropriation Bills is covered by a Supply Bill passed through Parliament before or about July 1 to cover moneys estimated to be needed to tide over until the main Appropriations are made.

The Budget session is a crowded one. The Treasurer reads the Budget speech, submits papers containing accounts, estimates and any other material he chooses to place before the House, and moves that the first item on the Estimates be agreed to. Days of debate follow, usually of the most disjointed and often of the most parochial sort, since Members are at liberty to wander over the whole range of public affairs. This discussion is, however, an important part of the democratic process. The Opposition commonly moves, by way of formal censure, that the amount of the first item of the Estimates be reduced by £1. The Budget is finally adopted by rejection of this amendment and the carrying of the Treasurer's motion. Further days (and often entire nights) are then immediately spent in considering the Estimates, which are dealt with and passed, with or without debate, Department by Department. Again debate is wide-ranging and disjointed. The old British Parliamentary practice of airing grievances before voting supply is very much in evidence.

Budget and Estimates are considered by the whole House sitting as the Committee of Supply. At the end of the Estimates debate the House carries the motion "that including the several sums already voted for such services there be granted to His Majesty to defray the charges for the year X-Y, for the several services hereunder specified, a sum not exceeding £Z." Then

the whole House, sitting as Committee of Ways and Means, on receipt of a formal recommendation from the Governor-General, votes an appropriate sum from the Consolidated Revenue Fund and the Appropriations Bill usually goes through all stages without delay, or, indeed, much or any debate. There follows the passage of necessary individual Taxation, Loan and Grants Bills and of other machinery legislation connected with them. Speaking on the 1930 Budget, Prime Minister Scullin remarked that it was a reflection on the Constitution (he was referring to Section 55) that nine separate Assessment Bills and nine separate Rates Bills should be necessary to impose the taxes of that year.

There may be supplementary Appropriations Bills passed during the Budget Session or later to meet outstanding expenditure of previous years still not fully authorized. There may be a supplementary Budget and supplementary appropriation and tax legislation later in the year to meet contingencies and changes of an unexpected and major sort in the current financial situation—e.g., those due to the outbreak of a war.

It is plain that Parliament always spends a considerable proportion of its time on Money Bills and money matters generally. Over the first 45 years of the Commonwealth, in fact, some 54 per cent. of all Bills passed have been primarily concerned with finance or with the machinery for raising, spending or disbursing public moneys. A further proportion of legislation has an appropriation aspect requiring under Section 56 of the Constitution the formal message of request from the Governor-General. Moreover, many parliamentary questions, some matters raised on the adjournment, discussions in the Committee of Supply on "Grievance Days" and some censure and no-confidence motions revolve around financial issues. A very large part of parliamentary time is thus concerned in one way or another with financial policies and administration.

Whether such time is spent well or to the best advantage is an open question. The Commonwealth Parliament rigidly and with great advantage follows the centuries-old House of Commons Standing Order No. 63 requiring all Appropriation Bills and resolutions and Bills requiring such appropriations to originate from the Crown. That requirement, based on the desire for stable finances and the elimination of irresponsible, spendthrift measures, was written into Section 56 of the Constitution and is therefore beyond the power of the Commonwealth Parliament itself to vary. Nor has the private Member a right to move amendments increasing the proposed appropriations in such measures:

> "All Hon. Members who have been private Members of this Parliament for any length of time know that on innumerable occasions such Hon. Members have been prevented from moving amendments to Bills

> involving the expenditure of public moneys.... It is open to the Minister in charge of the Bill involving the expenditure of public moneys to indicate that he is prepared to consider favourably suggestions for amendments the effect of which will increase the appropriations, but before even he may move them he must fortify himself with an additional message from the Governor-General.... The practice in this regard has not varied since the inception of federation."[64]

There are ways in which the private Members could be more intimately and regularly associated with financial administration to the general benefit. It has been suggested already that restoration of the Committee of Public Accounts would improve at once the parliamentary check on financial administration and the quality of financial debates, particularly those on the Budget, the Estimates, the Auditor-General's Report, and on Supply, Appropriation and Tax Bills. Another Committee on Federal Relations would be of considerable use in watching, and making through its members informed contributions to debates on Loan, Grant and other financial assistance (e.g., drought relief) Bills which are related to the States and possibly arise from Commonwealth-State ministerial conferences and negotiations. Such a committee has become all the more necessary since the introduction of the Uniform Tax system and the necessity for it is in no way diminished by the existence of the expert Grants Commission.

VIII

Looking at the growing responsibilities of the House of Representatives towards the close of his public career, Deakin expressed the opinion that "if this is going to be a practical working legislature for Australia we shall have to develop more and more the Committee side of this great House."[65] For lack of parliamentary committees Deakin had looked to extra-parliamentary bodies. At the time it was set up he had, for instance, hailed the ill-fated Interstate Commission as "the eyes and ears of Parliament." The case for an extended committee system in the Commonwealth Parliament is now more than ever a clear one. But, unlike the argument for such a development in Britain, the Australian case is not based primarily on the prospect of more rapid despatch of legislative business. In fact the result would seem to be the reverse, as is impliedly admitted by such an advocate as Maurice Blackburn:

> "Although it would mean a great change in our Parliamentary procedure, I consider that measures should be submitted to joint committees of the two Houses before introduction, with the object of overcoming as many difficulties as possible. They should also be submitted to interested outside bodies. There is too much secrecy about our legislation at present. When a Bill is introduced in the House it should be a much more matured product than it now is."[66]

The most substantial arguments for a developed committee system would seem to lie elsewhere. The history of the Broadcasting Act of 1942 would suggest that one major function of parliamentary committees should be the public investigation of problems out of reports upon which legislation can be built by the Government of the day. That applies particularly to semi-technical matters like broadcasting. Their second function would be the informing of a group of parliamentarians in these subjects, thus providing the Houses with "amateur experts" within their own ranks—men who can at once raise the standard of debate and perhaps better fit themselves for ministerial office.[67] Moreover, development along these lines would equip Parliament with more men capable of considering issues on equal terms with the higher public servants who are increasingly tending to a standard of technical competence in economic and related subjects in advance of the bulk of parliamentarians. At the same time there might well develop a degree of understanding and co-operation between the rank-and-file parliamentarian and the professional administrators which has been sometimes absent in recent years. It would be naive of any observer to suggest that Opposition Members, at least, will ever be thus satisfied as to the policies being carried out, but at least they would have a better command of more facts in making criticisms.

> "Members had a real difficulty in the early days of the Parliament in getting accurate information on commercial and industrial matters to guide them. Later in the history of Australia came the Bureau of Statistics; the carefully and completely compiled customs returns; the Treasury figures, and the Tariff Board reports. Since that time, too, the organization of the various commercial, manufacturing, producing, and industrial bodies has become complete, and they have manifested keen activity in putting their position before members."[68]

Greater parliamentary committee work would further extend this same trend of development.

In so far as public committee hearings are provided for, articulate public opinion could be brought into closer contact with the preliminaries to legislation. It should not hastily be concluded, however, that a committee system of the American type, which was developed to meet the special difficulties of a legislature in whose deliberations the Executive had no part and gave no leadership, could be advantageously adapted to a system of mature Cabinet Government either in Australia or elsewhere. But committees properly attuned to the spirit and forms of parliamentary government could serve the country well as the eyes and ears and to some extent the brain of the legislature, the more so since the functions and fields of interest of the Commonwealth have so enormously increased.[69]

There are, however, qualifications which must be made to any case for a greater development of committee work in the Com-

monwealth Parliament. The need for more and better committees is one of many factors pointing to the long standing necessity for an enlarged House of Representatives. Otherwise any appreciable increase in committees is foredoomed to failure. Moreover, there are certain prerequisites to the setting up of a committee system in a parliamentary system. In moving for a select Committee on the Estimates in 1912 the British Chancellor of the Exchequer insisted that three basic principles must be observed:

1. The Government must not be deprived of its responsibility;
2. The House must not be divested of its authority; and
3. The Committee must not accept responsibility for policies adopted.[70]

There appears to be general Australian concurrence in those principles. Prime Minister Menzies, speaking in 1941, recalled that:

> "The common rule in this Parliament has been that committees should contain a majority of Government supporters.... In my opinion it is essential that any Government should have, so to speak, the carriage of committees established in this fashion. That has always been the practice of this Parliament; if it were not so, the Government, while retaining the technical administration in its hands, would, in certain particulars, have to abandon that administration to the Opposition."

In the same debate J. H. Scullin, a former Prime Minister, concurred in that view:

> "When I was Prime Minister I held the view that the Government should have control of all such committees. I do not change that view because I am now on the Opposition side of the House."[71]

It is equally desirable that, as actually practised in the Commonweath Parliament, the Government should have the naming of committee chairmen, which practice should ensure competent and experienced leadership without the less fortunate features of the American seniority rule.

The committee must not set itself up as rival to the authority of the responsible Minister, but equally it should not interfere with the executive authority of statutory corporations. Thus a critic had reason to complain of the attitude of the Joint Standing Committee on Broadcasting towards the Australian Broadcasting Commission that:

> "The Committee can and does deliberate upon an enormous number of policy, administrative and technical problems which normally are the business of the broadcasting instrumentalities."[72]

Any committee developments on a large scale will raise this issue over and over again. As Australia becomes more collectivist and her collectivist activities run more and more to

long term plans the damage which could be done by committees lacking a sense of responsibility and of self-restraint can be readily foreseen. If the Labour Party should seriously embark on attaining its objectives it must face squarely the problem of the place of Parliamentary Members and Committees in the process. If the public accepts such a Labour policy the anti-Labour parties have to look at and take a responsible attitude towards the same problem.

It goes without saying that parliamentary committees should keep scrupulously within their terms of reference, though it should also be noted that Parliament and the Government have a special responsibility to draw reasonable and workable terms for all committees. During the First World War, the Melbourne "Argus" charged the Standing Committee on Public Works with holding "illegal" meetings and with "illegally" administering oaths:

> "As already shown in the 'Argus', the Act distinctly provides that the Committee shall only investigate matters specifically referred to it by the House of Representatives.... Consequently, if the Committee, disregarding the provisions of the Act, conducts investigations, either upon Ministerial authority or upon its own initiative, its sittings are being illegally held, and it is extremely unlikely that in such case the payment of the fees of its members would be sanctioned by the Auditor-General."[73]

It would appear that some Committee and Ministerial initiative could well have been allowed in this instance.

Parliamentary committees of investigation, whether Select, Standing, or Special, should not be used as an excuse by the Government either for delaying decisions or action or for not summoning Parliament. They should not be created or used simply as sources of consolation for disappointed Cabinet aspirants, nor so operated as to be a waste of public moneys.[74]

Actually since the Privy Council gave judgment in the case Attorney-General of the Commonwealth v. Colonial Sugar Refining Coy. Ltd. (1914 A.C. at 237) there has been some uncertainty as to the extent of powers of Parliamentary Committees. Wynes takes the view that, since that decision, "Parliament could validly enact statutes requiring information in respect of only any of the enumerated subjects of Commonwealth power."[75] This vividly illustrates the inroads which federalism has made into the authority of the Commonwealth Parliament as compared with the British model.

The Houses of the Commonwealth Parliament have few Standing Committees, whether joint or separate, and the majority of those which exist are concerned with domestic arrangements like the library, printing and standing orders. The Standing Committee on Public Works (a joint committee)

has had a continuous existence since 1913, though its stature has diminished over the years.[76] The Standing Committee of Public Accounts, as already related, was suspended in 1932, while a Second World War counterpart, the Joint Committee on War Expenditure (of 1941), enjoyed only a quiet and fitful career. The Senate has, as an outcome of the report of its Select Committee on Standing Committee Systems (1929–30), a potentially important Regulations and Ordinances Committee to review delegated legislation laid on the tables of both Houses in accordance with statutory requirements; that committee has, however, given an uneven performance.

In June, 1941, there were created Joint Committees on Broadcasting, Profits, Rural Industries, Manpower and Resources, Taxation and Social Security, in addition to the Committee on War Expenditure. These operated with mixed success. Those on profits, rural industries, taxation and manpower and resources all lapsed fairly quickly after making reports of more or less value. The Broadcasting Committee became a statutory committee and the Social Security and War Expenditure Committees survived one general election at least, making some ten reports over a period of five years.

To such Parliamentary Standing or Special Committees are added at times Select Committees (on the British pattern) appointed to make enquiries into some special case or "hot" political issue. Over the years Select Committees have tended to be used less and less. Where formerly a Select Committee would have been adequate and appropriate, a Royal Commission or some other extra-parliamentary enquiry has tended to be appointed. This resort to an extra-parliamentary form of enquiry is in part at least to be attributed to the high regard in which members of the judiciary are held in Australia, as in other British countries. In part, perhaps, it is due to the unwillingness of the small membership of both Houses to have additional duties thrust upon them.

There are no committees corresponding to the five committees (including the specialized Scottish Committee) of the British Commons to which are referred the committee stages of much legislation. All Bills in the Commonwealth Parliament go through the Committee of the Whole, in the same way as Money Bills have traditionally done in Britain.

The value of thorough, conscientious and objective committees and commissions of enquiry and investigation, parliamentary and extra-parliamentary alike, which have been one of the major British contributions to the art of government, is likely to increase rather than to diminish in the economic and social complexity of modern democracies. Long ago the father of collectivism, Karl Marx, set the seal of his approbation also on

these instruments of British Government over whose reports he had laboured with such epoch-making results:

> "We should be appalled," he confessed in the first edition of 'Das Kapital', "at the state of things at home [i.e. in Germany], if, as in England, our governments and parliaments appointed periodically commissions of inquiry into economic conditions; if these commissions were armed with the same plenary powers to get at the truth; if it was possible to find for this purpose men as competent, as free from partisanship and respect of persons, as are the English factory-inspectors, her medical reporters on public health, her commissioners of inquiry into the exploitation of women and children, into housing and food."

Committees, however, like other parliamentary devices, justify themselves not simply as means to particular immediate ends but as means to the general end that representative opinion, representative criticism and representative constructive thinking may be regularly brought to bear on every phase of government. The Australian Parliament must be effectively representative or fail in its essential purpose.

CHAPTER VI

THE SENATE

"As the Courts are the guardians of the rights of the States in matters which lie outside the federal power, so the Senate is the guardian of the interests of the States in matters which are within the federal power."

Sir Harrison Moore.

"If we are to create a House, with all the traditions, so far as responsible government and its authority are concerned, of the representative chambers which exist in these colonies and the mother country, and are then to introduce on the other side, clothed with equal power, a body entirely foreign to the British Constitution, and to which there is no sufficient parallel in the Australian colonies, we shall be creating at the outset certain conflict and inevitable deadlock.... To introduce the American Senate into the British Constitution is to destroy both.... We say at the same time that it would be possible to constitute an Upper House so intimately in relation with public opinion and composed of men so highly qualified that it should exercise a very large and salutary power indeed in controlling legislation, and in controlling the Executive Government."

Alfred Deakin.

"Democracy, for good or evil, is a plan of government. The checks and balances, the upper houses.... the judicial vetoes, the statutory majorities, the federal division of power—all these are not plans for government, they are plans for resisting government."

E. T. Brown.

THE evolution and position of the Commonwealth Senate as a component of the national parliamentary machinery should be studied carefully against the long, learned and sometimes even heated debates upon its form and powers in the National Conventions of 1891 and 1897–8. These debates, in turn, must be seen against an historical background made up of three elements. First, Convention Members had in mind throughout their debates the constitutions and records of the Upper Houses (Legislative Councils) of the Australian Colonies—Houses which Liberals loathed as being undemocratic, while Conservatives regarded them as "the only bulwarks against the coming Socialism."[1] Second, the role of the House of Lords in the British Constitution—yet to be more precisely

defined by the Parliament Act, 1911—was not forgotten. Thirdly, and above all, the model of the American Senate, at that time still indirectly elected by State Legislatures, was constantly quoted and debated.

Victorian delegates, in particular, brought to the Conventions strong views about Upper Houses, for over a great many years a guerrilla warfare had been sustained between the Assembly and the Council in that Colony, flaring into a bitter battle on more than one occasion. Upper Houses, whether manned on a nominated or property-franchise basis, were anathema to men like Deakin and Higgins. There were, on the other hand, Conservatives like Captain Russell of the 1891 New Zealand delegation who had lively fears of " the cyclonic effects of popular gusts of passion." These sought for the Commonwealth a States House which would also constitute a bulwark for property and the established social order.

From the outset, however, it was plain to delegates that if the Federal Constitution was to receive either the formal approval or the lasting loyalty of the bulk of the Australian people it could not primarily or indeed in the least obviously serve the economic interests of those who stood against the popular will, wherever that will might lead. This was as clear to the more acute and liberal champions of a Senate with co-ordinate powers as to those who acquiesced in a Senate with equal State representation only because it was an element in the inescapable price of union:

> "As has been well pointed out by many speakers," said Cockburn, "there is no analogy whatever between the Council of the States or Senate and an Upper House. Although this has been well recognized, I cannot altogether agree with some of the arguments which have been brought forward in support of the contention that the Senate should be given powers co-ordinate with those of the Assembly which represents population. I quite agree that this should be the case, but some of the arguments have, to my mind, been of a mistaken nature. It has been contended that the Senate should have authority co-ordinate with that of the popular assembly in order to act as a sort of check upon hasty legislation—something to stand in the way of the will of the people.... Federation cannot exist, co-ordinate Houses cannot exist and work together unless they both recognize and yield to the sovereignty of the people. The attempt, either here or in any other free country, where the people have been accustomed to exercise their liberties, to set up a legislative chamber, by whatever name it is called, as something which is going to stand for any length of time, or even for a short time, in the way of the pronounced will of the people, cannot result in anything but in disaster. There is no fear of bursts of popular opinion if popular opinion is allowed to flow easily and in broad channels, as it does in free communities. It is only if it is improperly resisted that the force of popular opinion becomes overwhelming and carries all before it."[2]

It was for these reasons that Cockburn agreed with Deakin's contention that:

> "However high the title, however lofty the claims of the Senate, if it derives its origin from an indirect method of election, the representative character of its Members cannot equal that of men who face the people directly, and win, in their own person and after fierce conflict, the confidence of a majority of electors."[4]

Given popular election of the Senate, however, the Liberals were quite agreeable to the general principle of a Second Chamber. Deakin even went so far at the 1891 Convention as to declare in favour of its performance of functions which Cockburn would seem to have rejected as undemocratic:

> "I believe that we cannot have a better ideal for our second Chamber than the House of Lords as its functions are now interpreted; at the same time I will confess to Honourable Members that in defining its exact position we might possibly have some difficulty. I have, indeed, no desire to see a body whose authority would be as capable of variable interpretation as is that of the House of Lords under the British Constitution.... The powers intrusted to it should be those powers which have always belonged, under responsible government, to a Second Chamber, namely the power of review, the power of revision, and the power of veto limited in time."[5]

On the issue of popular election to the Senate, at least, most of the Liberals of the smaller Colonies were prepared to meet their Liberal colleagues from Victoria and New South Wales. In so doing they were rejecting the then current mode of indirect election of United States Senators by State Legislatures and anticipating the Seventeenth Amendment of May 31, 1913, by which American Senators also became subject to direct election. In many other matters of detail the "States' Rights" champions at the National Conventions sought guidance and authority from the forms and record of the American Senate as they knew it. Undoubtedly those of them who had followed American affairs were impressed by the strong regional and local loyalties of Senators of the Reconstruction and Railroad periods in the United States, as they were by the great and extensive American literature on States' Rights.

Many were so dazzled by the effects of both the American constitutional and party systems—which allowed Senators very wide freedom from strict party alignment in voting—that they took almost for granted a like state of affairs in an Australian Senate, despite an entirely different constitutional background and tradition of party warfare. A class basis of Australian party warfare was already emerging and so long as that basis remained dominant there could be no prospect of a working "States' House" at all. When parties came to be based broadly upon classes the interests of either class in one State were more likely to be more nearly linked to those of the same class in other States than with the opposite class in the same State

(There are, naturally, a few obvious but perhaps superficial exceptions, notably the protection and assistance of the Queensland sugar industry.)

Some, of course, saw this. In 1891 Cockburn had foreseen the possibility of a party future for the Senate; yet in 1897 he still found it expedient to seek election to the Second Convention with such unreal and parochial arguments as this:

> "The Senate or Council of States, in which all the colonies, large or small, have equal representation, must have powers co-ordinate with and in no way inferior to the House of Representatives in which representation is based upon population. Doubtless majorities should and will rule, but there is every reason why a majority of people in South Australia should not be overruled by a majority of people in New South Wales and Victoria."[6]

Deakin, as so often was the case, saw things clearly and realistically:

> "The contentions in the Senate or out of it, and especially any contention between the two Houses, will not and cannot arise from questions in regard to which States will be ranked against States... Contests between the two Houses will only arise when one party is in possession of a majority in the one Chamber and the other in possession of a majority in the other Chamber.... The men returned as Radicals would vote as Radicals, the men returned as Conservatives would vote as Conservatives. The contest will not be, never has been, and cannot be between States and States.... It is certain that once this Constitution is framed it will be followed by the creation of two great national parties. Every State, every district and every municipality will sooner or later be divided on the great ground of principle, when principles emerge."[7]

In accepting the final provisions for the constitution, status and functions of the Senate in 1898, then, individual members of the Convention had in their own minds very different pictures and hopes of what it was to be and do. Most of them made the profound mistake of believing that their interests and the state of their own minds in 1898 would not be greatly dissimilar from those of the men and women who would elect Senators or be elected as Senators in the years to follow. In fact, after the first decade of the Commonwealth, relatively few Senators had prior experience in or attachments to the State Legislatures and Administrations. Once the union was consummated and national economic policies were laid down, few men ever came to the Senate with the degree of provincialism in their thinking which was so evident in so many members throughout the Conventions. Piddington was as wide of the mark as many a "States' Rights" advocate in his view of the future Senator:

> "To a Senator public opinion will mean, not, as it does to a Peer or a Legislative Councillor, the opinion of the same public as that which elects the representative House, but the opinion of the public of his own particular province."[8]

The fact that Senators are elected from larger, State-wide electorates by the same adult suffrage as are Representatives is remarkable not for the parochialism it engenders but rather for the additional hold the national parties are thereby given over every individual Senator who has any ambition to be re-elected and for the lack of status of the individual Senator in the public mind. For "no candidate can hope to make himself personally known in so vast an electorate, and in consequence the party machine rules all. . . . The results of the evil have been further aggravated by reason of the fact that none of the parties has shown any interest in using the Senate nomination to return to Parliament outstanding personalities. Instead, it has been the reward for the 'good party man'."[9] Or, as Maurice Blackburn bluntly stated the contrast:

> "A member of the House of Representatives can build up a personal following in his electorate, but no Senator can build up a personal following in the State that will be of sufficient electoral value to him."[10]

The natural result is either public neglect of or public cynicism about the individual Senator:

> "Nomination by the right party will make a Senator of any man, and, without raising his hand or his voice in the service of the country during his six-year term, the same simple condition will ensure his re-election, and the electors will be none the wiser."[11]

In the establishment of a party basis for the Senate, form was in many respects slow to follow fact. Senate Standing Order 36A (Regulations and Ordinances Committee), which was adopted on March 11, 1932, and amended in 1937, straightforwardly acknowledges the party make-up of the Chamber by providing that nominations to the committee be made by the Leader of the Government and the Leader of the Opposition in the Senate. No such explicit provision for party representation appears, however, in Senate Standing Order 38 (Disputed Returns and Qualifications Committee), adopted on October 1, 1909, though the party outline was already clear.

Once the party system had effectively dominated the Senate—a process which in fact took at most seven or eight years—"the first time that regimentation and organization of parties other than Labour began in earnest, so far as I can remember, was after the establishment of the Fusion Party, after the Fisher Government came in in 1908"[12]—a wholly different situation than that envisaged by most of the Founding Fathers was disclosed.

So long as the party majorities in the two Houses were of the same colour, the position was satisfactory enough as regards sheer despatch of business. There was not, however, always a corresponding addition to the dignity and lustre of the Senate.

Consideration of measures, particularly of those which reached it towards the close of a Session, has not infrequently been farcical. As one retiring Senator privately commented, one requires a thick skin and a sense of humour in that Chamber.

From the earliest years the Senate has voiced regular protests at the absurd manner in which it is given the task of suspending Standing Orders and of passing numerous Bills through all stages in the last day or two of Session. With the passing of the years this state of affairs has, if anything, deteriorated. Three instances of relatively recent years suffice to demonstrate the low level which has been reached:

> "As to the lateness of the arrival of important business in the Senate, I point to what happened on Thursday, the 7th December, and Friday, the 8th December, 1939. On the first of those days, fourteen Bills were put through the Senate.... On the second of those days no fewer than seventeen Bills were passed, including the Appropriation [Works and Buildings] Bill, the Appropriation Bill, the Raw Cotton Bounty Bill, the Air Force Bill, the Motor Vehicle Engine Bounty Bill, the Defence Bill No. 3, the Postal Rates [Defence Forces] Bill, the Wheat Industry [Wartime Control] Bill, the Supply and Development Bill, the Commonwealth Public Service Bill, the Northern Territory [Administration] Bill, the Seat of Government [Administration] Bill, the Canvas and Duck Bounty Bill, the Tyre Cord Bounty Bill, and several customs tariff bills."[13]

Speaking at 8.35 p.m. on April 3, 1941, Senator Keane declared:

> "I protest against the closing stage of the Session being used by the Government to bring before the Senate fifteen Bills, including that now under discussion, which seeks the sanction of Honourable Senators to the raising of £50,000,000. No opportunity has been given to Honourable Senators to examine the Bill.... Fifteen Bills have been hurled at Honourable Senators since four o'clock this afternoon. The manner in which Ministers are handling the business of this Chamber is an outrage."[14]

Nor does a change of Government alter the case. When Parliament assembled for the August-September sittings of 1944 the Senate adjourned for a fortnight, as there was no legislation either already dealt with in the other House or to be initiated in the Senate (this is the less surprising as the portfolios of Postmaster-General, Vice-President of the Executive Council and Interior are often amongst the four or five allotted to Senators, and their holders do not normally initiate much legislation from year to year). When the Senate reassembled a fortnight later it still found little or nothing to do, since special Adjournment and Censure motions had held up legislative business in the House of Representatives. Finally, all legislation of substance, and most of the machinery Bills as well, reached the Senate in the last week of the Session, and most of it in the latter part of that week. These three instances all

occurred in wartime, but this is by no means only a wartime phenomenon.

While the Senate can fairly castigate the House of Representatives and the Cabinet for their indifference to its interests, it has ample remedy if Senators would just once or twice make common cause in their own behalf. They apparently do not assess the issue at stake sufficiently highly and are prepared to accept their lot quietly. Moreover, they do not always respond adequately to the better efforts of the Executive:

> "I was in the Senate when the Bankruptcy Bill was first introduced. Senator Pearce, a most painstaking man in preparing his brief, laid himself out to give a good explanation of the consolidation of the Bankruptcy Acts of the States. Only three of us bothered to listen to him. Finally, Senator McDonald of Queensland drew attention to the state of the House, and later on he was hauled over the coals for being so officious as to cause the quorum bells to be rung. It has since been shown that this particular Bill was ill-digested. It was my experience during my short term in Parliament that not more than one-third of the thirty-six members of the Senate could be relied upon to perform legislative duties conscientiously."[15]

So long as the circumstances here outlined continue there can be no prospect at all of the Senate's performing adequately such special functions as R. G. Menzies and others have suggested should be peculiarly its own:

> "My experience of a Lower House suggests that members of that House will always concentrate their attention on the point of substance, and are impatient about points of form.... The Upper House occupies a comparatively minor position in relation to matters of substance and should, therefore, devote more attention to matters of form."[16]

An entirely different place is enjoyed by the Senate when the colours of the majorities in the two Houses are not identical The Senate is then the subject of very considerable thought on the part of Cabinet and of noticeably more consideration by the House of Representatives. For there is likely to be in a Senate hostile to the Government none of what Shane Leslie described as "the languid and dignified indignations peculiar to opposition in the House of Lords." The Senate majority is in a position to snipe at, obstruct, reject or hold up to ransom every measure of Government business.

The fact that the Senate is elected directly by adult suffrage does not mean, however, that any such action by a Senate majority hostile to the Government is any the less an affront against the essential democratic principle of majority rule. For, quite apart from the remarkable voting system by which, since 1918, Senators are chosen, there is no getting past the fact that the Senate retires for re-election only by halves, the term of a Senator being six years as compared with the Representative's three. Whereas after a general election, the majority in the

House of Representatives has a single new mandate for its declared policy, only half of the Senate has been to the people. Consequently a Senate majority partly made up of Senators who have already served half their term can claim no valid up-to-date mandate to obstruct the measures of the new House of Representatives' majority.

No feat of reason or imagination can prove that the Senate is representing either the current views of the electors of the six States or the long-term will of the nation as a whole. For clearly the earlier-elected half of the Senate can have had no more deliberate mandate at the time of its election than the contemporary Lower House and now has an entirely stale authority which in effect has been lately superseded. "In other words, there is never any point of time at which the Lower House has not twice as good a claim to represent the people as the Senate has."[17] There is, of course, one exception to that contention and that is a Senate majority returned at the election following a double dissolution, which is, however, unlikely to differ in political colour from the majority elected to the new House of Representatives. This essential weakness in the moral and political authority of a hostile Senate majority is the reason why no crises occurred when, in the earlier years of the Commonwealth, "motions have been carried in the Senate in spite of Government disapproval which, had they been passed in the House in similar circumstances, must have been treated as a withdrawal of confidence from the Government."[18]

There must, for all that, be provisions for resolving inter-House deadlocks where the Houses enjoy, constitutionally, co-ordinate powers in respect of all but Money Bills. The British Parliament itself had in 1911 finally to set down in statutory form—in the Parliament Act—a formula for the resolution of its own deadlocks. In the case of the Commonwealth, Edmund Barton argued that the constitutional prevention of "tacking" of every kind (provided against in Sections 54 and 55 of the Constitution and hence liable to policing through the High Court) would prove sufficient. The Second National Convention, however, decided for a more comprehensive and at the same time a specific formula. It rejected Isaac Isaacs' un-British proposal for a referendum on deadlocked Bills, in favour of the more strictly parliamentary procedure of a double dissolution and general election after stalemate had been twice demonstrated at an interval of three months. The election is to be followed, if the deadlock continues, by a joint sitting of the two Houses with passage of the Bill by an absolute majority of the numbers of the Houses combined. This formula—embodied in Section 57—was finally shaped and agreed to at the Premiers' Conference of 1899, after long debates in the Conventions had led to no conclusion in the matter.

There have been several requests for double dissolution. The Governors-General have granted only one (that of 1914). There has been no occasion for a joint session of the two Houses following on such a double dissolution and election. The parliamentary events of 1914 established that, in the context of two-party or virtually two-party politics, a deliberately engineered deadlock is sufficient occasion for the application of Section 57. The Government of the day made no secret of the fact that it carefully chose the abolition of preference to trade unionists in Commonwealth employment as an issue on which it was bound to achieve deadlock with the Labour majority in the Senate.

Short of double dissolution, however, extra-constitutional inter-House conferences, variously constituted, have been resorted to in order to forestall deadlocks.[19] W. M. Hughes' two extra-constitutional referenda on the conscription issue during the First World War were, in effect, an attempt by coercing the Senate with public opinion to forestall a deadlock and the possible loss of office entailed in dissolution.

As the core of the relationship between Executive and Legislature is money, so it is the crux of relationships between a popular House and a Federal Senate. The focus of the Convention struggles over co-ordinate powers for the Senate was the power of that Chamber over Money Bills. Provision against "tacking" of extraneous policy matters to Money Bills having been agreed to, the champions of "States' Rights" had finally to compromise on the formula set out in Section 53, the material sentences of which run as follows:

> "Proposed laws appropriating revenue, or moneys, or imposing taxation, shall not originate in the Senate.... The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the annual services of the Government. The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people. The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications."

Under this Section, it should be immediately noted—for the Senate was quick to exact recognition of the point—that Supply is still a vote of both Houses; it must be passed by both, though it can be initiated and varied by the Lower House only. If the Senate fails to pass a Money Bill the same provision (Section 57) holds, as is applicable in a deadlock over ordinary legislation.

Whenever in the history of the Commonwealth the Senate has stuck fast to the "requests" it has made to the House of Representatives regarding the amending of particular Money Bills, and has repeated them after their first rejection, the latter

House has, without admitting the constitutionality of such persistence by the Senate, conceded the immediate point at issue.[20] So, contrary to the intention of those of the Founding Fathers who prevailed in the protracted debates over Section 53, the Senate, when thoroughly determined, can in practice apparently force amendments to Money Bills upon a House of Representatives unwilling to insist on a double dissolution in accordance with the deadlock provisions of Section 57.

> "The Federal character of the Senate was secured by provisions which, by protecting it against every kind of 'tacking', gave it a stronger position than any Second Chamber in the Empire."[21]

That fact is just one, but that one an outstanding reason why the general failure of the Senate to realize in practice anything like its intended stature is so truly remarkable.. It serves once again to throw the spotlight full upon party—and on the broad class basis of party—rather than upon federalism as being the positive force in the national parliamentary processes of Australia.

It was the emergence of the two-party system by 1908–9 which really cut out of the Constitution as it stood any hope of more than a nominal "States' House." At the same time those Senators who had come to the Senate in 1901 from active roles in colonial politics and at the Conventions were beginning to dwindle, too. The Federal Union was by then a going concern and had acquired in the minds of legislators—in particular of "new men"—and of the public generally a personality and impetus and loyalties of its own which few at the Conventions, with their strong attachment to colonial politics, could have expected to develop in so short a time. The national economy was rapidly becoming closer-knit behind the national tariff. Resolutions and proposals for constitutional amendments already had the States on the defensive. When the time came for them to share loyalties with the nation and with national parties, both increasingly exacting in their demands, the States were bound to find their own share of popular allegiance diminishing.

At the outset the Senate had made a brief effort to take seriously its function as "States' House." In 1901 an attempt was made to give equal State representation on each committee. Provision was made for discussion on any subject put down by a Senator and supported by four other Senators; thus any State (each having six Senators) would be assured of a hearing if its spokesmen so wished. The President was limited to the exercise of a deliberative vote, it being felt that the equality of State representation should not be infringed. In debate on the Electoral Bill (1902) the Senate successfully insisted that the "States' House" should retain equal power with the National House over electoral matters such as electorate boundaries. The

Senate explored and insisted upon the full extent of its power regarding Money and Tax Bills—between January and May, 1908, the Senate sent back 238 items of the proposed Tariff Schedule for reconsideration by the House of Representatives. Realizing how much power ultimately lies with modern Cabinets the Senate more than once in the early years urged a larger allocation of portfolios to Senators. And in the first Senate the Western Australian Senators, at least, sat together (in Opposition) and most if not all of the Western Australian Senators for some years refused to attend party meetings. This approach to their functions on the part of Senators naturally affected the position and effectiveness of Whips as well as Ministers:

> "Right through the first federal Senate my duties as Whip were not simply the regimentation of supporters of the Government. The most onerous part of my task was to ascertain the individual feelings of members of the Senate on various Bills and to supply the Minister in charge with that information.... Another part of my duties was to have the member, no matter on which side he sat, in the House at the appropriate moment, so that the Minister, who was already aware of his opinions on the subject, could answer his questions in the House or in Committee.... The Minister required to know every night when the House rose exactly how every member felt, not merely about the Bills then before the Senate but also about those coming on. The Labour Party was the only one that met as a party."[22]

A later Senator told of the change in all this:

> "In the Senate.... the Labour members and to some extent Nationalist and Country Party members are definitely controlled. The members of the different parties in both Houses meet together in what can be described as Nationalist and Labour Caucuses, and there is to a greater or less extent a general caucus control.... I have stayed away, because I preferred as a member of the Senate to maintain my independence of thought and action."[23]

And finally, in more recent times even the anti-Labour parties, which formerly so vigorously attacked the Caucus practice, especially as it touches the Senate, have been disciplining those Senators who choose to dissent from their colleagues' caucus policies. After voting with the Government on a financial measure, Senator Johnston had this to tell the Press:

> "I was told this afternoon of my exclusion from meetings of Opposition Senators, but I had already refused to attend Senate Opposition meetings last Wednesday and Thursday. I refused to attend the meetings because of pressure put on me at a previous meeting to take the business out of the hands of the Government. The Opposition Parliamentary Leader [Mr. Fadden] had told me that the joint Opposition party had declared the Uniform Tax Bills non-party measures, and that I was free to vote as I thought fit. [But] this Tory bloc has been attempting for weeks to introduce Caucus methods into the Senate."[24]

As Senator Johnston alone was excluded, presumably the attempt was successful.

Opinions differ as to the ultimate effect of the bringing of Senators into Caucuses of members of both Houses. Ex-Senator Keating, on the one hand, takes the worst view:

> "The Senate is rushing into extinction every time it goes into Caucus, because, even if unanimous, it goes into Caucus in the minority, and would be simply preparing its own death warrant by opposing the Government there. I never could see why members of the Senate should attend these meetings.[25]

The Senator appears to postulate a possible solidarity of Senate members in the Party room as unrealistic as the assumption of State solidarity in the Senate itself. H. S. Nicholas, as counsel assisting the Royal Commission on the Constitution, took a more optimistic view of the general outcome:

> "It is more doubtful whether the Senate does not in fact protect the smaller States, though in a way not anticipated by the framers of the Constitution. It may be that the fact of each State having six Senators gives each small State a far greater weight in the councils of parties and ministers than it otherwise would have."[26]

Caucus was not the only level at which pressure was exerted on Senators by party disciplinarians, Labour and anti-Labour alike. In 1913 it was the anti-Labour Party machine in South Australia—a "small" State whence had come the ablest champions of "States' Rights" to the 1897–8 Convention—which refused re-endorsement (and thus any chance of re-election) to one of those very Convention stalwarts of 1897, Sir Josiah Symon, on account, not of any failure to stand up for the rights of South Australia, but of his failure to respond consistently to his party Whip in the Senate.

While Labour undoubtedly first and most thoroughly applied Caucus control to its Senators, anti-Labour had, prior to the First World War, aimed at least two other blows at the status and power of the Senate. After the 1913 general election the Cook Ministry was in a minority in the Senate. It was therefore unable to prevent Labour's carrying twice in the Senate a Bill for a referendum on wider Commonwealth Powers. The Senate asked the Governor-General to authorize the referendum on the grounds that Section 128 of the Constitution placed it within the power of either House alone to initiate such a process. The Governor-General, on the advice of his Ministers, in the tradition of responsible government, refused the Senate's request. In terms of responsible government the Governor-General was perfectly correct but he had nullified a paragraph of the Constitution and thereby laid down that not only State Parliaments but the "States' House" of the Commonwealth Parliament had to wait on the pleasure of the national House of Representatives before any proposal to amend the Constitution could be placed before the people. The Senate did not appeal to the High Court on this matter—and there is doubt whether the High

Court would have entertained any petition from the Senate. By general consent the matter was allowed to rest on political rather than judicial interpretation—in other words, the British element triumphed over the American (federal) element in the Constitution in this instance. Perhaps the Governor-General felt about the Senate as his predecessor did. The latter (the Earl of Dudley) on his return to Britain gave it as his opinion that:

> "The Senate is no more, if not less, the guardian of State rights than is the Lower House, nor is it distinguished from the House of Representatives by any larger amount of that Conservative feeling which is usually associated with revising Chambers."[27]

This blow to the Senate was promptly followed by another when the Cook Government, finding its parliamentary position intolerable, deliberately engineered a double dissolution. Concerning this particular use of Section 57:

> "It was argued against the Government that the application of the remedy to such a case was, in effect, a denial of the Senate's right to exercise an independent judgment in legislation altogether, and that the confessed intention of the Government to bring about a double dissolution by submitting to the Senate Bills which they were certain to reject was, in lawyer's language, a fraud upon the power."[28]

In another series of attempts to strengthen its position in its first two decades the Senate was repeatedly rebuffed. In June, 1901, the Senate sought so far-reaching a departure from British parliamentary practice as the establishment of a right, and implied duty, of Ministers to speak in either House. One of their keenest desires in making this proposal was the initiating of a larger number of Bills in the Senate; as it was, the proportion so initiated in the early years of the Commonwealth was quite substantial.[29] As late as May 13, 1920, Message 21 from the Senate President to the Speaker read:

> "The Senate transmits to the House of Representatives the following Resolution which has been agreed to by the Senate, and requests the concurrence of the House of Representatives therein, namely:
>
> > 'That the Standing Orders Committees of the Senate and House of Representatives be requested to consider the question of preparing Standing Orders providing that a Minister in either House may attend and explain and pilot through the other House any Bill of which he has had charge in his own House'."

The House of Representatives never debated this resolution and the proposal, which had first been made with the idea of strengthening the "States' House" and was in 1920 made to bolster a House which had failed to distinguish itself in any capacity, was quietly dropped. (A faint echo of this issue was heard during the Second World War when Senators made it quite plain that they preferred an extra-constitutional secret

joint meeting of the Houses to the more "regular" secret sessions of the Houses separately. The former device enabled them to question and debate with the whole Cabinet on war issues.)

Disregard by the House of Representatives of Senate messages of the kind referred to here was paralleled by Cabinet discrimination amongst the actions of the Senate as to which should be the objects of serious attention. In the early years of the Commonwealth the Senate carried several votes and resolutions which, had they occurred in the House of Representatives, would undoubtedly have entailed the resignation of the Government. Cabinets can the more readily neglect Senate motions inasmuch as the voting systems applying to the Senate, before and since the changes of 1919,[30] as often as not returned and still return party representation quite out of line with the division of opinion in the country as indicated by the totals of votes for the Parties. Thus in the general election after the double dissolution of 1914 the 52⅔ per cent. of electors who voted Labour returned 56 per cent. of the Members of the House, but 86 per cent. of Senators. The Senate of 1919–1922 by accident of the voting system practically ceased to be a party Chamber. There was only one Labour Senator, despite the fact that at both the 1917 and 1919 elections Labour had gained over 40 per cent. of Senate votes. The Party element reasserted itself again but in several subsequent elections the results were as one-sided as those of 1914, 1917 and 1919.

Nor is the system of filling casual vacancies such as to give any real public status to the man chosen. He is indirectly elected by a joint sitting of the Houses of the Parliament of the State where the vacancy occurs, if it is in session, or may be appointed until the next session by the Governor-in-Council if it is not sitting. He may thus be a member neither of the same party as his predecessor nor yet of the same party as his State Government; for, in a joint sitting, the weight of conservatives from the property-franchised or indirectly elected Upper House of the State may outweigh any contrary majority in the Lower House.

The most notorious case of such a casual appointment occurred in March, 1917, when Senator Ready (Labour) of Tasmania resigned and Mr. John Earle (anti-Labour) was sworn in overnight amid serious charges from the Parliamentary Opposition as to the *bona fides* of what was, at best, a slick transaction.[31]

There has been one exception to this mode of filling a Senate vacancy. That was established in the dispute between Messrs. Vardon and O'Loughlin of South Australia in 1906 regarding the former's election to the Senate. A Court of Disputed Returns, the South Australian Parliament, the Senate itself and finally the High Court all were brought into the case. The

High Court ruled for a fresh popular election to the seat in dispute.[32] This would not occur, however, where, as in the first Parliament, Senator J. Ferguson's seat was declared vacant by vote of the Senate for failure to attend sittings.[33]

At the close of the First World War a distinguished British committee under the chairmanship of Lord Bryce examined the position and future of the House of Lords. The Bryce Committee never made a formal report because it never achieved a working plan for the future constitution of that House on which there was sufficient agreement. But Lord Bryce addressed a letter to the Prime Minister in the course of which he set out the following four functions which he thought an Upper House could well perform:

> "1. The examination and revision of Bills brought from the House of Commons, a function which has become more needed since, on many occasions during the last thirty years, the House of Commons has been obliged to act under special rules of debate.
>
> 2. The initiation of Bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.
>
> 3. The interposition of so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be specially needed as regards Bills which affect the fundamentals of the Constitution or introduce new principles of legislation, on which the country may appear to be almost equally divided.
>
> 4. Full and free discussion of large and important questions such as those of foreign policy at moments when the House of Commons may happen to be so occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and divisions do not involve the fate of the executive Government."[34]

Sufficient has already been said to indicate the ideas of some of the Founding Fathers regarding the first three of these functions in relation to the Australian Senate. Enough indication in a general way has also been given as to how well the Senate actually functions in discharging such aspects of its work.

As early as 1911 the historian Turner rendered this judgment on its performances:

> "As a chamber of review, as a check on hasty legislation, or as the originator of statesmanlike measures of national utility, it had been a failure. [Yet] it had great possibilities under the Constitution, ample leisure to do good work and thoroughly to investigate the basis upon which proposed legislation rested. It had almost unique power, for a Second Chamber, to enforce its amendments."[35]

A little more should, however, be said on the application of Bryce's fourth point to the Senate.

In the first years of the Commonwealth there were some very notable debates on major national policy issues in the Senate. In later days there have been few Senate debates of note—and those notable mostly for "sensational" happenings (in the newspaper sense) rather than for their illumination of the issues at stake. A few efforts have been made to improve the contribution of the Senate. The attempt to have all Ministers speak in both Houses has already been mentioned: such a move might have increased the interest in and standards of Senate debates; but the additional strain would have been an unfair physical burden on Ministers. On May 6, 1931, Sir Robert Gibson was, unprecedently called to the bar of the Senate and examined on the financial crisis.[36] Within reason the occasional and judicious repetition of such a practice of general consultation with a key authority might enhance the standing and standards of Senatorial performance.

Committee consultation would, however, be the more normal procedure. The most obvious field for specialized debate and committee work by the Senate is the field of Commonwealth-State relations. The Senate could never replace conferences and standing committees of representatives (ministerial or official) of Commonwealth and State *Governments*, but it could very usefully supplement and review their deliberations. There is reason to believe that the State Governments would welcome public debate in the Senate on national issues very directly affecting their policies and, in particular, their finances (more so than ever since the advent of "Uniform Taxation"). This point is partly illustrated by the complaint of Premier Forgan Smith of Queensland to the Constitutional Conference of 1934:

> "In matters of major policy the Commonwealth Government makes decisions without reference to State Governments. Take, for example, the Imperial Economic Conference at Ottawa, where decisions were made which vitally affected the interests and industries of all State Governments. In respect of those matters there was no consultation with State Governments as to the policy to be pursued. It may be argued that the Commonwealth has complete powers in that regard. I am not offering any objection to that point of view; but my contention is that, while a line of policy adopted by the Commonwealth may be advantageous to its own financial position, it may be disastrous to the interests of the respective States, in that it may result in swollen Commonwealth revenues and deficits in the various States."[37]

Nothing the Senate could do would replace inter-governmental consultation; but is informed investigation, discussion and vigilance in such matters by the Senate too much to expect? If it is, the future existence of the Senate would appear the harder to justify.

There is, of course, a growing list of bodies and developments which deal directly with or indirectly affect Commonwealth-State relations. Their reports might well be the subjects of full-dress Senate debates, especially early in the session when legislation is scarce. Such are the reports of Premiers' Conference, Loan Council, National Works Council, Grants Commission, Tariff Board, River Murray Commission, Agricultural Council and the National Health and Medical Research Council.

The Senate, though the "States' House," has never in fact set up a committee on Commonwealth-State Relations.[88] Yet in a development of Committee work, whether in Joint Committees with the House of Representatives, or in Standing Committees of its own, seems to lie at least the partial salvation of the Senate. At present it can have no claim to greater knowledge, wisdom, maturity or intellectual ability than the House. Solid committee work could at least give it a claim to be better informed on some special subjects. Senator R. D. Elliott apparently felt that when he moved, on December 5, 1929:

> "That with a view to improving the legislative work of this Chamber and increasing the participation of individual Senators in such work, a Select Committee of seven members be appointed to consider, report and make recommendations upon the advisability or otherwise of establishing Standing Committees of the Senate upon:
>
> (a) Statutory Rules and Ordinances.
>
> (b) International Relations.
>
> (c) Finance.
>
> (d) Private Members' Bills.
>
> and for such other subjects as may be deemed advisable."

One witness, in evidence before that Committee made two very pertinent remarks on the general subject, the implications of which should have struck home:

> "I have little hesitation in saying that our Senate, by adopting the Standing Committee System, could rapidly mould itself into a legislative body of experts. May I also recall the greater leisure of the Senate as compared with the Lower House."[89]

The Senate, however, did not go beyond establishing a Statutory Rules and Ordinances Committee, which has worked fitfully through the years.

A very promising recommendation like the following has been almost entirely neglected, to the great loss of the Senate, particularly in recent years of more active Australian external policy:

> "We recommend:
>
> (a) That a Standing Committee of the Senate to be called the Standing Committee on External Affairs be established;

(b) That such Committee shall consider and from time to time report upon:

(1) Agenda for meetings of the League of Nations;

(2) Reports of Australian delegates to the League of Nations Assembly;

(3) Reports of Australian delegates to any international conference under the auspices of the League of Nations or otherwise;

(4) Reports of the Administrators of the Mandated Territories;

(5) Any other matters of international or Empire concern;

(c) That such Standing Committee shall also furnish an Annual Report to the Senate."[40]

If the Senate will do so little to draw itself up by its own enterprise it can blame no one else for its conspicuous failure to make its mark in national politics. Without setting itself in obstructive opposition to the Government of the day and to the Lower House of Parliament, it has had before it throughout its history great opportunities to develop its potentialities. To-day it enjoys little public interest and evokes no enthusiasm. Rather than obstruct the processes of government it perhaps does well to remain relatively inactive; but rather than discredit by its ineffectiveness the standing of parliamentary institutions some critics have suggested the Senate would do better to disappear from the scene. In practice, however, institutions are usually reluctant to vanish and it would seem unlikely that the Australian electorate, with its high propensity to vote against centripetal tendencies in the Constitution, would liquidate the Senate in cold blood. There would appear, therefore, to be a very heavy obligation upon the Senate itself to extend and improve its performances.

CHAPTER VII

THE CABINET

"In deliberations that ought to be kept secret (whereof there be many occasions in Publique business), the Counsells of many, and especially in Assemblies, are dangerous; And, therefore, great Assemblies are necessitated to commit such affaires to lesser numbers, of such persons as are most versed, and in whose fidelity they have most confidence."

Thomas Hobbes.

"The Cabinet System .... is of all forms of constitution the most delicate in its adjustments and, therefore, the most easily thrown out of gear. Depending for the most part upon conventions, perpetually adapting itself to new conditions, social and political, subject to continuous modifications in details, it demands from those responsible for its working unceasing vigilance, a clear apprehension alike of practical conditions and of philosophical implications: above all it demands a reverence, almost religious in character, for the inner spirit which has inspired and still inspires it."

Sir John Marriott.

"The desire for office is the desire of ardent minds for a larger space and scope within which to serve the country, and for access to the command of that powerful machinery for information and practice which the public departments supply. He must be a very bad minister, indeed, who does not do ten times the good to the country that he would do out of office, because he has helps and opportunities which multiply twentyfold, as by a system of wheels and pulleys, his power for doing it."

William Ewart Gladstone.

I

THROUGHOUT the history of the Commonwealth Parliament, "responsible government has existed, inasmuch as Ministers have been Members of Parliament, and the Governor-General has acted on the advice of his Ministers."[1] The High Court has recognized the fact of responsible government with all its historic implications.[2] Under this British inheritance "the executive power is so closely allied to the legislative that it may be impossible to draw any other line than that which expediency and practical good sense command."[3]

What distinguishes the executive from the legislative power is the necessity that "the authority must be continuous and not occasional; it must be capable of prompt and immediate action;

it must possess knowledge and keep its secrets; it must know discipline. In a word it must have very different qualities from those which belong to the larger representative and popular bodies which in modern times exercise legislative power. . . . . In the history of Australia the want of an authority to speak and to act for the whole was as potent a factor in producing union as the absence of a common legislative power."[4] The extent and initiative of the executive power are very great indeed,[5] and Cabinet, as "the supreme committee of adjustment in close touch with the dominant interests of the nation," immediately became "the central shaft to which all the other agencies of government are geared."

Reference has already been made to the early inclination of some Convention members towards the American style of governmental structure, but that cause was lost before the meeting of the Second (if it ever survived the First) Convention. More persistent, however, has been the hankering after the Swiss system of elective ministries, which was also proposed from time to time inside and outside the Conventions in the 1890's. In 1891 Cockburn, for instance, declared his preference:

> "I am inclined to think that our best course will be to follow in this respect, the example of Switzerland, and have our ministers elected individually by Parliament. I am all the more willing to recognize this because, quite apart from federation, this is a reform which for many years I have been in the habit of advocating even with our present parliaments."[6]

Another South Australian delegate, Sir Richard Baker, stood strongly for elective Ministries, made up equally of Senators and Representatives.[7] Sir Samuel Griffith sought election of Ministers at a joint sitting of both Houses.[8]

The advocacy of elective Cabinets went on even after the foundation of the Commonwealth. Such was the theme of a pamphlet supplement of the "Age" (Melbourne) of August 6, 1904, entitled "The Evils of Party Government: Proposals for the Elective System of Selecting Cabinet Ministers." Echoes of this pamphlet were heard in the 1905 Parliamentary Session. The idea persisted in political backwaters even after the passing in 1909 of the real three party system, which had been its only possible—and, at that, a tenuous—justification. It came to the parliamentary surface at least once more, in July, 1925, when the Country Party Member for Wimmera, P. G. Stewart, moved for elective Ministries. Sir Littleton Groom, then Attorney-General, gave the motion its quietus on that occasion. There were faint stirrings of the idea in 1940 and 1941. The whole conception is so alien to the British parliamentary spirit as to commend itself to-day only to occasional parliamentary splinter groups, to outside pressure groups, and, most commonly, to those who are substantially ignorant of the realities of politics

and particularly of the indispensable functions discharged by national parties in carrying on stable government.

Though Australia has a *written* constitution, the written provisions for the Executive are sketchy and rely on constitutional convention almost as much as does the British model.

> "The organization of the Government, and the relations of the Ministry and Parliament in our system are .... not under the continual direction of organic laws but are freely organized as utility has suggested, or may suggest, within the ultimate bounds of law."[9]

Parliament itself in a succession of Ministers of State Acts has determined, for instance, how many Ministers there shall be and what shall be the size of the pool or fund whence they draw their Ministerial allowances. Sir Harrison Moore explains such explicit provision as the Commonwealth Constitution makes for the composition of the Executive in these terms:

> "In England the Cabinet and the Ministry are not identical bodies, the latter includes a large number of officers 'liable to retire upon political grounds' who are able to sit in Parliament. In Australia there are no Ministers outside the Cabinet..... Provisions regarding the Ministers of State, though they are made with a view to the Cabinet system, do not preclude very extensive modifications of that system. There is no recognition of the Cabinet, for the Federal Executive Council is not necessarily identical in constitution or functions with the Cabinet. There is no recognition of the collective responsibility of the Ministers of State; Section 64 treats them as separate adminstrative officials; and there is no hint of a Prime Minister."[10]

The Executive Council is a purely formal constitutional agency, giving legal force to certain Cabinet decisions, appointments and similar matters. In recent years, indeed, there have rarely been more than the necessary two or three Commonwealth Ministers present[11] at a Commonwealth Executive Council meeting. The first Executive Council had to be constituted to advise the Governor-General from the first day of the Commonwealth. The elections for the first Parliament had not yet taken place. Special provision was, however, made in the Constitution to meet this initial situation; but it was provided that thereafter no man could hold a ministerial portfolio longer than three months without becoming a Member of Parliament.[12] From the appointment of the first Executive Council the precedent was created of including one or two Ministers "without portfolio" in the Cabinet and the Council—but they, too, were Members of Parliament. "In the last Deakin Government, which was known as the 'Fusion' Government, Deakin did not hold the office of Minister of State. He was a Minister without portfolio. . . . Executive acts were not performed in his own name. He did not accept a portfolio because he desired to devote his whole attention to thinking and co-ordinating, which are the great tasks of the leader of a Government."[13]

This insistence on membership of one or other House was aimed at securing direct answerability to Parliament—though some latter-day critics suggest Parliament's hold is very tenuous:

> "The Legislature passes upon the aggregate acts of the Cabinet and pardons something it does not like because of the good things done or expected to be done.... and, therefore, Parliament has no real control over the Cabinet."[14]

So long as the Government can count implicitly on a solid majority backing there is a sense in which Maurice Blackburn's complaint is correct, but a less individualistic party member than he might have expressed the reason differently. Constitutionally the control of the Legislature over the Executive can be—and, in a political crisis, is—very thorough indeed. At the end of the real three-party era—the first decade of the Commonwealth—Sir Harrison Moore even wrote that:

> "The control of the Lower House over the policy of the Crown and its Ministers is so complete that the problem of modern governments is rather how to protect the Government from the caprice of the House than to secure further control; it is never necessary for the House to fall back upon the source of its powers."[15]

The true picture, for practical purposes, lies somewhere between the contentions of Blackburn and Moore but he would be a bold man who would define the point.

The Cabinet in the Australian State and Federal spheres, as has been suggested, inherits directly the traditional place of the Cabinet in Britain. What that place was considered to be at the time of the foundation of the Commonwealth is set out by Quick and Garran:

> "The Cabinet is an informal body having no definite legal status; it is in fact an institution unknown to the law; it exists by custom alone, and yet it is the dominant force in the Executive Government of every British country.... There are two commonly recognized qualifications necessary for *ministerial appointment*, (1) *membership of the Privy or* Executive Council; (2) membership of Parliament. From the point of view of the first qualification the Ministry may be described as a select committee of the Privy or Executive Council; the remaining members of that body not being summoned to attend either the meetings of the Committee or the ordinary meetings of the Council. From the point of view of the second qualification the Ministry may be called a Parliamentary committee whose composition and policy is determined by the party commanding a majority in the national chambers.... The proceedings of the Cabinet are conducted in secret and apart from the Crown. (The deliberations of the Executive Council are presided over by the representative of the Crown). Resolutions and matters of administrative policy requiring the concurrence of the Crown, decided at meetings of the Cabinet, are formally and officially submitted to the Executive Council, where they are recorded and confirmed. The principle of the corporate unity and solidarity of the Cabinet requires that the Cabinet should have one harmonious policy, both in administration and in legislation, and that the advice tendered

by the Cabinet to the Crown should be unanimous and consistent; that the Cabinet should stand or fall together. The Cabinet as a whole is responsible for the advice and conduct of each of its members. If any member of the Cabinet seriously dissents from the opinion and policy approved by the majority of his colleagues it is his duty as a man of honour to resign.[16] Advice is generally communicated to the Crown by the Prime Minister, either personally or by Cabinet minute. Through the Prime Minister the Cabinet speaks with a united voice. The Cabinet depends for its existence on its possession of the confidence of that House directly elected by the people, which has the principal control over the finances of the country. It is not so dependent on the favour and support of the Second Chamber, but at the same time a Cabinet in antagonism with the Second Chamber will be likely to suffer serious difficulty, if not obstruction, in the conduct of public business."[17]

Within the ambit of Commonwealth powers the Australian Cabinet inherits not only the traditional place of the Executive in Britain, but also gains strength from certain local circumstances. Historically, Australians were used to strong Executives, from the days of the early autocratic governors onwards. Geographically, distances disproportionate to resources and population made necessary a great deal of governmental initiative, enterprise and finance, and hence of executive activity. Distances also induced reluctance in Federal parliamentarians to meet longer or more frequently than could possibly be managed, a reluctance intensified since 1927 by the long and bitter winters and the remoteness of the Federal Capital, Canberra. This has again strengthened the Executive as against Parliament (even within the Cabinet distances sometimes have the effect of thrusting urgent out-of-session decisions upon the Prime Minister and a few intimate colleagues or colleagues who spend most of their time in Canberra). It is the Executive which carries on day-to-day relations with the States and negotiations through the Premiers' Conferences and other regular or extraordinary Commonwealth-State meetings; Parliament, at best, has a "post facto" ratifying role. Moreover, the small numerical size of both Houses has frequently meant that, by the time the Front Bench and other parliamentary offices are filled, the remainder of Parliament (with the possible exception of the Opposition Front Bench) is less than a match for the Executive. Backed by all its departmental resources and experts the Government has, of course, a real advantage over even the Opposition Front Bench.

II

The leader and pivot of the Cabinet is the Prime Minister. In Australia, as so long the case in Britain, he has no constitutional and only a rare statutory recognition.[18] The Constitution

carries no reference to the party which he leads at elections, to the majority party which he leads in the House, or to the team which he leads as a Cabinet. For most purposes this lack of definition of his office and powers gives the Prime Minister greater rather than delimited authority and influence. But, by comparison with that of British Premiers, the power of the Australian Prime Minister does appear to have been circumscribed by local party practices.

The Governor-General sends for the party leader who has the best prospect of forming a Cabinet backed by a stable majority in the House with a view to commissioning him as Prime Minister. Since 1909 this has simply meant sending for the leader of the majority party or of the majority element in the anti-Labour coalition which is virtually continuous for parliamentary but not electoral purposes.[19]

In the period of minority governments (1901–1909) a party leader, before he could accept a commission to form a Cabinet, had to have the assurance of at least one other party that it would offer general acquiescence in his administration. In 1905, Deakin, as Liberal Prime Minister (with the smallest party in the House), actually had the satisfaction of receiving a written assurance from the Labour Party in the form of a Caucus resolution which read:

> "That this party, having been informed through Mr. Watson of the measures proposed to be submitted by Mr. Deakin, agrees to give his Ministry a general support during this Parliament in the transaction of public business."[20]

In 1907 Deakin's minority Ministry was defeated on a motion to adjourn a debate asking for a Royal Commission on the Postal Department but, after consultations, yielded the point and, contrary to the normal practice of governments which cannot control the business of the House, did not resign. In April, 1908, his Government was again defeated. Instead of going to the Governor-General and "tendering certain advice" forthwith, Deakin went to Fisher, leader of the Labour Party and, after discussion with him, carried on despite the defeat to clear up matters before the House, including such a major matter as the Tariff, which was incomplete. No wonder George Reid, the Leader of the (Conservative-Free Trade) Opposition, reflected in his Reminiscences that such arrangements, which approximated coalitions, "at all times are full of the elements of disaster. . . . Coalitions in the face of great national dangers are the most proper and patriotic things in the world; but coalitions at other times debase the political currency and prevent the proper working of the parliamentary machine."[21]

A Prime Minister was forced, under the conditions of that period, not only to give representation to all States in his Cabinet for reasons of electoral expediency, but was further

constrained to select as far as possible men who would not provoke the third party by whose sufferance alone he retained office. Both these necessities militated against the selection of the most able Cabinet team.[22]

While the end of the three-party system in 1909 relieved Labour of the latter complication, a very similar bugbear harassed the leaders of the succession of anti-Labour coalitions of later years. There has almost always been hard-bargaining and friction in Cabinet-making between the parties of town and country capital, and from time to time downright distrust.

> "In April, 1918, Mr. Hughes left for London to attend the Imperial Conference, and Sir Joseph Cook left ostensibly as Minister for the Navy, but really to watch Mr. Hughes on behalf of his section of the coalition."[23]

In 1922 the Country Party won 14 seats at the general election and as the price of a coalition with the then "Nationalists" obtained the exclusion of the Prime Minister, W. M. Hughes, from the new Cabinet, as well as five portfolios out of eleven. Nor was that all; there was an undertaking that any measure approved by only six to five in the Cabinet should be automatically held negatived.[24] There have, of course, been personal as well as intra-coalition frictions—in 1918 W. M. Hughes got rid of John Forrest from his Cabinet by unprecedentedly having him made a peer, while at a later date Hughes was himself dropped by J. A. Lyons for embarrassing the Government with his book "Australia and War To-day."

A Labour Prime Minister in Australia also has difficulties unknown in Britain. They are largely those associated with the Labour practice, operative since 1908, whereby the parliamentary party selects members of a Labour Cabinet by exhaustive ballot (leaving to the Prime Minister only the task of allocating portfolios amongst those selected). This practice was introduced because some sections of the Party complained that "men have got seats in Cabinet who have been merely friends of their leader. A man would abstain from criticizing his leader's actions in expectation of favours to come." While this procedure springs in part from the noticeable propensity of some Labourites in Australia chronically to suspect and snipe at their own parliamentary leadership, it does save the Labour Prime Minister from what is often an invidious task and what has been a contributing cause, if not always the origin, of schisms. While at Labour balloting for Cabinet personnel the running of a "ticket" is apparently not unknown, Caucus has tended to resent that practice and Party leaders, in consequence, to fight shy of open commitment to a ticket in recent years.

Labour Caucus has proved sober and even cautious in its election of Cabinets. After all, Labour Members in "unsafe" seats, at least, have an interest in selecting and maintaining an

able and stable Cabinet. It would appear that, once each State is assured of one representative in the Cabinet, the ballot process of selection weighs against the chances of Cabinet aspirants from the numerically smaller states. (It has even been suggested that the Sydney and Melbourne Trades Hall leadership can, on occasion, use their influence successfully to bring about a particular selection.[25]) So powerful is this principle of rank and file selection that, in 1910, when called upon by the Governor-General to form a Ministry from the victorious Labour Party, Andrew Fisher thought it politically tactful and expedient to ask the Governor-General for a stay in the commissioning process until he had met his party and been confirmed in the leadership.

There is, of course, something in the criticism that Labour Ministers are *individually* responsible to Caucus, and that Caucus, and not the Prime Minister, arbitrates between divided Ministers, of whom one may sometimes be the Prime Minister himself. A Labour Minister for Home Affairs even went so far as to say:

> "Caucus should officially notify His Excellency the Governor-General of the Labour Party's method of selecting Ministers by exhaustive ballot, which destroys the ancient idea that the Prime Minister selected them.... The vital difference between the position of Ministers under Liberal and under Labour rule is the method of appointment. Liberal Ministers, being selected by the favour of the Prime Minister can hold office only during his pleasure, and must resign should they disagree with the policy or methods of their leader. Labour Ministers, on the other hand, are selected by a vote of the whole party, and derive their authority from that source; consequently only that authority which elects possesses the power of withdrawal. The personal authority of the Prime Minister does not necessarily determine the attitude of other Ministers for the Prime Minister is himself amenable to the same authority and has no personal prerogatives, apart from his position as elected leader of the party."[26]

That statement of the position tends to underestimate the power of a Labour Prime Minister and to overstate that of his anti-Labour counterpart (especially that of a Prime Minister leading any of the anti-Labour Coalitions since 1923). But it does indicate the basis for such incidents as E. J. Ward's reported Caucus attack on his Cabinet leader, John Curtin, in November, 1943, for not consulting all Ministers before arranging the appointment of the Duke of Gloucester as Governor-General.[27] On the other hand, "on two occasions action which Mr. Hughes [as leader of the Nationalist Government] wanted to take in London was vetoed by Cabinet in Australia."[28]

At the same time, the Prime Minister remains, not less in a Labour than in an anti-Labour administration, the pivot of the Cabinet, as his absence or weakness in a crisis soon reveals:

> "In the October [1930] session of Parliament the difference of opinion on the financial question nearly broke up the [Labour] Party. With

> the Prime Minister in England and Mr. Theodore under a cloud the Caucus got out of control. Labour policy in the Federal Parliament is determined by a majority vote of the Caucus. However, the Ministry is usually able to keep the majority behind it in formulating policy. If it is not possible the leader (Mr. Scullin in this case) would normally submit his resignation and ask that a new leader be appointed. In Mr. Scullin's absence, the Acting Prime Minister, Mr. Fenton, was not able to retain the support of the majority on a number of issues.''[29]

During the First World War the extent of the emergency, the breadth the High Court gave to the defence power in the Constitution, and W. M. Hughes' extraordinary personality combined to emphasize the primacy of the position of the Prime Minister in the Cabinet and the nation. Hughes was even able successfully to disregard his public pledge to resign if the Second Conscription Referendum were defeated.[30]. He could drive his own Ministers to resignation by his insistence on personal emergency control.[31]

> ''His leadership has been eccentric and provocative. Instead of being a factor of advancement he has been a disturbing spirit. Mr. Hughes has not sufficient principle to be a sectary, but he thrives in an atmosphere of animosity.... He signalized himself chiefly by his administration of the War Precautions Act. With a fountain pen and a blank sheet of paper he had it in his power at a moment's notice to give any order or create any crime he fancied. The situation was very much to his taste, and among certain interests he created a reign of terror which will long be remembered.''[32]

Such picturesque language should not be taken altogether at its face value, but serves to stress the change wrought in the Prime Minister's position under wartime emergency powers (John Curtin's position in the early months of 1942 was at least comparable with that of W. M. Hughes in 1917, though Mr. Curtin's exploitation of his ascendancy was mild, as became a good Party man and a man capable of applying the lessons of history).

Yet ''there is no dictatorship in this.... [The Prime Minister] is all the time subject to the all-powerful political sanction that his commission will operate only as long as he is the person who can command a majority of the House of Representatives''—as another wartime Prime Minister, A. W. Fadden, learnt in 1941.

Though it would appear sufficient for the Prime Minister to take a personal decision and individual action to transmit to the Governor-General the resignation of his Administration or a request for the dissolution of Parliament, it is usual for such a decision to be taken in consultation with his Cabinet. In 1931, for instance, J. H. Scullin, after defeat in the House, secured the adjournment, called his Cabinet together, and apparently the Cabinet collectively decided to request a dissolution. It is

not clear whether a Cabinet-meeting has been called in every case; but it is perfectly clear that action like that of Ramsay Macdonald in Britain in 1931 would be considered extraordinary if it occurred in the Commonwealth. It is likewise the prerogative of the Government to choose, within reasonable limits, the date for dissolution of a Parliament approaching its full term, and hence to choose the precise date for the ensuing general election. This carries with it a potential political advantage. In 1925, for example, Prime Minister Bruce chose for the general election a time when the trade unions were at the height of their unpopularity with the "floating vote" (as the result of a big overseas shipping hold-up) and was handsomely repaid in votes.

EXPERIENCE OF AUSTRALIAN LEADERS PRIOR TO BECOMING PRIME MINISTER OF THE COMMONWEALTH.

Name, Date of Taking Office.	Years as M.P.			Years as Minister.			State Premier.	Subsequent Career (if any).
	State.	Federal.	Total.	State.	Federal.	Total.		
Barton, 1901 (Anti-Labour)	18	—	18	4	—	4	—	Justice of the High Court.
Deakin, 1903 (Anti-Labour)	20	3	23	7	3	10	—	Continued in Parliament.
Watson, 1904 (Labour)	7	3	10	—	—	—	—	Continued in Parliament.
Reid, 1904 (Anti-Labour)	20	3	23	6	—	6	5	Continued in Parliament; High Commissioner in London.
Fisher, 1908 (Labour)	5	7	12	·02	·33	·33	—	High Commissioner in London.
Cook, 1913 (Anti-Labour)	10	12	22	5	1	6	—	Continued in Parliament; High Commissioner in London.
Hughes, 1915 (Labour)	7	14	21	—	5	5	—	Continued in Parliament.

EXPERIENCE OF AUSTRALIAN LEADERS PRIOR TO BECOMING PRIME MINISTER OF THE COMMONWEALTH.

Name, Date of Taking Office.	Years as M.P.			Years as Minister.				Subsequent Career (if any).
	State.	Federal.	Total.	State.	Federal.	Total.	State. Premier.	
Bruce, 1923 (Anti-Labour)	—	5	5	—	1	1	—	Lost and regained seat; High Commissioner in London.
Scullin, 1929 (Labour)	—	10	10	—	—	—	—	Continued in Parliament.
Lyons, 1932 (Anti-Labour)	20	3	23	7	2	9	5	Died in Office.
Page, 1939 (Anti-Labour)	—	20	20	—	13	13	—	Continued in Parliament.
Menzies, 1939 (Anti-Labour)	6	5	11	3	5	8	—	Continued in Parliament.
Fadden, 1941 (Anti-Labour)	3	5	8	—	1	1	—	Continued in Parliament.
Curtin, 1941 (Labour)	—	10	10	—	—	—	—	Died in Office.
Forde, 1945 (Labour)	5	23	28	—	6	6	—	Continued in Parliament; High Commissioner in Canada.
Chifley, 1945 (Labour)	—	8	8	—	6	6	—	—

In addition the following Prime Ministers were members of the National Conventions: Barton (1891, 1897–8), Deakin (1891, 1897–8), Reid (1897–8).

The temperament, capacity and experience of the Prime Minister are crucial for the stability and effectiveness of any Cabinet. In Australia, as in Britain, the Prime Minister is usually a successful senior parliamentarian with some past ministerial service, though neither Prime Minister Scullin (1929–31) nor any member of his team had any previous Com-

monwealth executive experience, and only two of his colleagues had any record of office in a State administration. Prime Ministers Watson and Curtin were similarly without previous Cabinet experience.

Cabinet decisions are apparently not normally taken to a vote. The usual practice is in effect to weigh rather than count opinions in order to determine the sense of the meeting. Consequently the ready grasp and moral authority of a strong and persuasive Prime Minister are commonly decisive, particularly if, as sometimes happens in Australia, he is also the Treasurer. Whether the decisions to which he steers Cabinet are successfully implemented and administered will depend not only upon his tact and adroitness as chairman of Cabinet, but also upon the insight with which he handles colleagues between Cabinet meetings. For the Prime Minister should to some extent be free and willing to be the confidant and adviser of his Ministers individually in their major day-to-day problems. If he succeeds then, his chairmanship of Cabinet should be the less exacting; his colleagues will work confidently with him and should work better with each other; and in any case he himself will be better seized of the factors, tangible and intangible, which must be taken into account in deciding current issues.

In recent years in Australia a Cabinet of nineteen has had to be selected from a party numbering about 60–70 in both Houses[33] and the "tail" has tended to be weak. Under such circumstances the Prime Minister has to leave the "tail" in the care of its Departmental officers or himself undertake the essential stimulation and energising. At the same time, the Prime Minister cannot take too much on himself without detriment to the working of the Cabinet system. The Governor-General of the day was moved to write this of his Prime Minister, W. M. Hughes:

> "In the course of Mr. Hughes' struggle after efficiency, the Prime Minister's Department became greatly enlarged, and it has become something of a maelstrom into which business from all departments is sucked and continues to swirl round and round, seldom getting back again into the ordinary channels, where presumably it might be carried further."[34]

At every turn the executive and legislative government of Australia proceeds by personal or group discussion and the Prime Minister is the major victim yet at the same time the indispensable solvent of the process. As leader of the House (the Prime Minister is never a Senator) his pre-eminence is normally undisturbed, his control firm, but his frequent presence indispensable.

Lord Morley enumerated the essential qualities of the chairman of Cabinet as "his sense of proportion, his strength of will, his prudent pliancy of judgment, his power of balance, his sure

perception of the ruling fact."[35] Some Australian Prime Ministers have measured well by that standard, both in Cabinet and before the House. Of Alfred Deakin, three times Prime Minister, for instance, it was fairly written:

> "In Cabinet he was shrewd, quick of grasp, far-seeing, full of initiative and energy, and his constructive capacity was of a high order; whilst his infallible tact, suavity and charm enabled him to exert a reconciling influence over his colleagues and in the legislature."[36]

Quite apart from his qualities of Cabinet chairmanship, and of leadership in the House, the Prime Minister must demonstrate convincingly his capacity "to anticipate dangers, initiate policy, control the services [civil and military], produce in the citizens good feeling and a spirit of service."[37] Certainly one Australian Prime Minister set the standard commendably high in laying down that:

> "The statesman, therefore, will not simply say: 'What will the people accept?' but he will modify the question so that it reads: 'What will the people accept after proper instruction and reasonable pressure?' "[38]

Whichever form the question takes, in practice it is Cabinet, under the Prime Minister's leadership, which must give the answer, and, on pain of failure and at worst loss of office, a tolerably right answer. In Australia the Prime Minister is dealing with what is, on the whole, a more cynical and suspicious general electorate in political matters than the British. At the same time he is less insulated personally from the hurly-burly of the press, the pressure groups and the "bureaucracy" than is his British counterpart. His lot is, in those directions, less enviable.

While a vote is said to be rarely taken in Cabinet, a Prime Minister cannot rely on his own central position to determine controversial policies; to ignore, or override, or "rush" a significant proportion of his colleagues is to court disaster, not only for the Cabinet but for the party upon which it is based. The conscription crisis of 1916 is the classic instance, complete with Caucus complications.

> "It is a fact that the Cabinet never at any time took a division respecting whether it would support conscription or not. . . . And the reason why no vote was ever taken is entirely that Mr. Hughes knew a majority of the Cabinet was hostile."[39]

> "Let me tell the public this also—that he could not have got a majority in the Cabinet to support such a Bill. . . . Even the referendum proposal hung in the balance for days, the Cabinet being equally divided when we took the proposal to Caucus. . . . That meeting had to be adjourned pending another meeting of the Cabinet, at which a bare majority was only secured by a material watering down of the original proposal; what may be called a compromise to

> consolidate the majority of one, and even then it was not too solid. We again met the Caucus, and I shall never forget the heroic determination, skill and courage of my leader during that crucifying session of 13½ hours, the result being that at three o'clock in the morning, or thereabouts, the terms of the 1916 referendum were practically endorsed by a bare majority of one on the votes of those present; some even disputed that.''[40]

Part at least of the Prime Minister's difficulty on that occasion lay in the fact that he had no mandate from the people, any more than from the Federal Labour Conference, for conscription. The 1914 election had been fought on entirely different issues. Mr. Hughes sought in the first referendum a means of receiving from the people a clear and direct mandate without either the clouding of the issue or the danger to his Ministry which might have occurred had he resorted to the constitutionally regular expedient of a dissolution and general election.

In the first nine years of the Commonwealth, while minority Governments held office on sufferance, the "mandate" concept had only a limited—though still a proper—place in Australian parliamentary government. But thereafter it came to the fore. Even so it has never held quite the significance in Australia which has attached to it in Britain in moments of crisis in the relations of the Commons and the hereditary House of Lords. For the Australian Senate, if so minded, is on better, if not finally convincing, ground in obstructing the legislative programme of the Government of the day than the House of Lords could ever be.

> ''What exactly is a 'mandate' in this connection? Is it suggested that a party which obtains a majority at the polls must, when it takes office, introduce no legislation other than that to which it has pledged itself during the election? But no Government has ever so limited its actions, nor considered itself to be discharging so narrow a delegacy. Nor can it often be said with accuracy what were the pledges it gave at the polls. Is it suggested, then, that whenever a large and important new issue emerges the Government must go to the country to find out the state of opinion? . . . . The truth, surely, is that the majority has a general charge to carry out the King's government within the framework of its party principles.''[41]

The pace of events to-day is too great for any narrower construction upon the mandate concept. Similarly the pace is too fast and the range of government activity too wide for more than a few individuals to inform themselves and make reasoned judgments upon even all the major matters which press for decision and action. At the same time, the electorate as a whole, through a legion of interest-groups, does watch and judge all aspects of government policy and performance. Consequently, when the general electorate chooses a particular Government it does so because a majority of the people believes that that Government will and should be free to take all decisions necessary according

to its declared principles and its known general approach. When, occasionally, an issue comes to light of such general interest and controversial nature that the Government is unwilling to proceed without renewed or specific mandate, the seeking of such mandate is entirely a decision for the Government and not in the least a matter for its critics to decide, unless they have the power to take parliamentary business generally right out of the hands of the Government. As Lowell picturesquely stressed in his "Government of England": "The Cabinet is an autocracy exerted with the utmost pubilicity, under a constant fire of criticism, and tempered by the force of public opinion, the risk of a vote of lack of confidence and the prospects of the next election."

Major elements in the strength of any Cabinet are cohesion and secrecy. The two tend to go together. Secrecy is always important: since the First World War only three Governments have been defeated on the floor of the House and on each occasion the defeat followed disclosure of secret papers or information. In 1929 the Bruce-Page Government fell after the disclosure of J. G. Latham's Cabinet Memorandum on the effects of proposed Arbitration Court changes; in 1931 the Scullin Government fell shortly after disclosure of cables passing between the Prime Minister and Cabinet colleagues; in 1941 the Fadden-Menzies Government fell after Winkler's disclosure of the Cabinet's alleged "secret fund" disbursements. Quite apart from any other positive reasons these incidents in themselves offer the strongest argument for secrecy in Cabinet transactions.

For a variety of reasons the principle of collective responsibility has always been strained by political conditions in Commonwealth politics. In the case of Labour Cabinets the complicating factors are Caucus and the Federal Labour Party Conference, which respectively make immediate parliamentary and standing policy decisions binding upon all members of the Parliamentary Party. It is not possible, however, to go all the way with Harrison Moore when he writes:

> "When the Caucus elects the Ministry, the regular sittings of the Caucus must, during the Parliamentary session, tend to supersede the deliberations of the Cabinet, to bring Ministerial differences to the arbitrament of the party meeting, instead of to the Cabinet or the Premier, and to substitute for the collective responsibility of the Cabinet to Parliament the individual responsibility of Ministers to Caucus."[43]

It has already been noted that Cabinet differences are aired again in Caucus on many occasions; it is true that, in 1915 and 1931 for instance, Caucus replaced Ministers in the Cabinet when occasion arose for a "spill." It is true that the outlines of the budget are often revealed and discussed in Caucus and that, in 1941, when the Curtin Government discussed its budget proposals with Caucus prior to presenting them to Parliament,

Caucus successfully brought pressure to bear to increase a proposed pension rate. On April 9, 1946, Prime Minister Chifley, in answer to a question without notice regarding a broadcast made by a Ministerial colleague, replied: "As I have previously stated, Ministers speak, not on behalf of the Government, but to express their own personal views. The views of the Government are expressed by the Leader of the Government." This may all seem to amount to a substantial break with the classical Cabinet tradition. But if Chifley had his Ward, Gladstone had his Chamberlain. And, in fact, the essentials of the Cabinet tradition are normally operative in Australia.

The principal Australian casualty is probably Cabinet secrecy, for, though Caucus proceedings are also confidential, the reality is very frequently otherwise, not least when Cabinet issues have been re-fought in Caucus. For the rest, it is seriously contended by some observers that novel aspects of the Australian practice represent a democratic advance upon the classical model:

> "The Government which has now been appointed has received several emphatic reminders since the election that it is in every respect subject to the will of the Caucus comprising the Labour Members of Parliament. The Caucus is in its turn made to realize that its policy is dictated by the Political Labour Leagues, which represent the party throughout the country. We thus have an example—perhaps the only example throughout the world—of a democratic Government responsible in fact as well as in theory to that portion of the electors by whom it has been returned to power for every phase of its policy."[43]

Once again it is necessary to caution that in practice the picture may not be quite as simple as that: in fact Cabinet and the Prime Minister, in Labour as in anti-Labour Governments, play much stronger and more positive roles than such interpretations would allow. It would be most exceptional for a Prime Minister not to command regular effective Caucus support. He starts with most, if not all, of his Cabinet behind him and can normally rely on the support of many others, and in particular of occupants of "unsafe" seats, more especially if he is himself a significant electoral asset.

The Prime Minister will, in addition, ordinarily have lieutenants with almost as great a moral ascendancy in the Party as his own, who can not only reinforce the hold of the Cabinet leadership over Caucus but will ensure a good showing in the House by thrashing out beforehand in the party-room the issues to go before the House. J. B. Chifley is said to have played this role consummately in the Curtin Ministry, particularly in the fields of taxation and social security legislation. In the House itself, of course, "no matter how far the work of a Minister may be open to criticism, the party must vote to support him or else risk the unpleasant consequences" of defeat, dissolution and general election. Apart from such an extreme

case, however, the Party inevitably stands to gain from showing itself informed, convinced and united in the House: such a result is worth painstaking debate and "coaching" in Caucus.

Anti-Labour Cabinets also have difficulties in regard to cohesion and secrecy. A Cabinet made up of two parties representing the frequently divergent interests of town and country capital, and including even within the same party men connected with or interested in such various concerns as the Colonial Sugar Company, the iron and steel ring, and the road transport interests, to which may be added perhaps a man "promoted" by a great newspaper magnate, is not as streamlined an instrument of either parliamentary or class warfare as some latter-day Marxists would have people believe. Far from being a body collectively in responsible agreement, such a Cabinet is always liable to become itself the arena where the various interests contend with each other. The most vivid documentation of this point is to be found in the history of the anti-Labour Cabinets of 1939–1941. On May 30, 1940, indeed, the Menzies Government was publicly revealed as completely divided when, in a parliamentary division on the Motor Vehicles Agreement Bill, all Country Party members of the Cabinet voted against the measure, and all the United Australia Party members of Cabinet voted for it, carrying the Bill on the votes of His Majesty's Loyal (Labour) Opposition.

Previously, in June, 1939, the Menzies Government had been defeated by 42 votes to 19 when the Country Party voted with the Labour Opposition against a Government motion to refer the whole future of the National Health Insurance Act, 1938, to a Select Committee. But at that time the Country Party leaders had not yet joined the Menzies Cabinet, though lending it general support. (This incident is also of interest in that, though the issue was of great political importance, Mr. Menzies did not resign or dissolve, but instead came to a negative compromise which satisfied his various opponents—he passed a Bill annulling the proclamation of the National Insurance Act, which, in the event, had the effect of burying it.)

Throughout the period of 1939–1941 the newspapers gave apparently all-too-well informed accounts of Cabinet divisions and accounts of "who supported whom" on particular issues discussed in Cabinet.[44] These occurrences have many precedents, however, amongst which Sir William Lyne's informative outburst in Parliament in May, 1909, is one of the most famous.[45] As early as 1903 Charles Cameron Kingston had met trouble through showing the Cabinet draft of a Conciliation and Arbitration Bill to the "Age."[46]

In Cabinets of all political colours there is the additional friction induced by human incompatibilities and feuding of personalities. This was apparently a major cause of the weakness

in the Cabinets between 1939 and 1941. Nor are matters helped by such eccentricities as W. M. Hughes' reported practice, in later years, of having his say and then walking out of the Cabinet room until the spirit moved him to return to speak again.

DURATION OF AUSTRALIA'S GOVERNMENTS.

Ministry.	Year.	Years.	Months
Barton	1901	2	9
Deakin I.	1903	–	7
Watson	1904	–	4
Reid	1904	–	11
Deakin II.	1905	3	4
Fisher I.	1908	–	7
Deakin III.	1909	–	11
Fisher II.	1910	3	2
Cook	1913	1	3
Fisher III.	1914	1	1
Hughes I.	1915	1	1
Hughes II.	1916	–	3
Hughes III.	1917	6	–
Bruce	1923	5	9
Scullin	1929	2	3
Lyons	1932	7	2
Page	1939	–	½
Menzies	1939	2	4
Fadden	1941	–	1½
Curtin	1941	3	9
Forde	1945	–	¼

Average life of Australian Cabinets (1901–1945) was about 2 years and 2 months. In Great Britain, over the same period, the life of Governments was about 3 years. In Britain, however, the full life of Parliament was 5 or more years as against 3 in Australia.

III

When the Commonwealth Parliament had completed its first twenty years, F. W. Eggleston wrote that:

> "The [Australian] statesman has to find his way and lead without any of the elaborate organization for his assistance which exists in Great Britain. The [Parliamentary] Private Secretary is not an Australian institution. Heads of Departments, though competent, are not trained to accept all the responsibilities that a permanent Under-Secretary does in England. The result is that a Cabinet Minister in Australia has to get up his own case on all important matters coming before Parliament. He has to a large extent to draft his own Bills and actually administer his Department. On the other hand he has none of the isolation of a British statesman. He cannot walk on the mountain tops. He must look after his electorate and be accessible to thousands. Lastly, and perhaps most

> important of all, he has no secure root in any class or section of the community or support from an accepted tradition. He has practically to make a position and a standard and, insofar as his attitude fails to accommodate itself to a swiftly moving development, he is visited with the responsibility of failure.''[47]

It is certainly true that so self-reliant were the early leaders and, by later standards, so relatively light their duties, that T. B. Bavin for some months in 1904 was at once Associate to Mr. Justice Barton of the High Court (to whom, as Prime Minister, he had been secretary) and secretary to the new Prime Minister, Alfred Deakin.[48] On the other hand, some of the early Ministers are known to have received considerable help in the preparation of speeches from political journalists (a custom which, it is understood, has not entirely died out in parliamentary circles, though no longer noticed in Ministerial realms).

Since 1920, however, the burden of Commonwealth administration upon Ministers has increased sharply. And the personal staffs of Ministers and the numbers and expertness of departmental officers and special advisers have increased more or less proportionately.

A great deal of business dealt with by Cabinet originates neither with the Cabinet Ministers who formally submit it, nor with other Members of Parliament or Party Executives. It springs from experienced senior public servants without whose watchfulness, forethought and initiative, based on day-to-day contact with many fields of national activity, Cabinets could not hope to maintain smoothly the complex government of the nation. But before any suggestion of a public servant becomes approved Cabinet policy it has to stand examination by his own Minister and by the Ministers collectively, all intent on maintaining themselves in power and therefore very ready to reject anything for which there is a possibility that Parliament or the electorate will not stand, or by which either may even be irritated. That is the greatest and most effective safeguard against bureaucracy (in the real sense of the term) which the system of parliamentary government affords.

As the fields of Commonwealth interest and administration spread, the number of Ministers of State increased from seven to nineteen. Experiments with Assistant-Ministerships or Parliamentary Under-Secretaryships, so far as they have been made from time to time, have not proved very successful. Some Members of Parliament have regretted these failures, if failures they were:

> ''The Lyons Government tried the experiment of appointing parliamentary under-secretaries. I never understood why the system was abolished because to me it seemed to be a great convenience to Ministers and to Members of Parliament.''[49]

There were, however, constitutional and political misgivings. Any payment of Assistant-Ministers, above their parliamentary allowance, was held constitutionally dubious—Prime Minister Menzies' feeling was that "that cannot be done without first amending the Constitution, because those gentlemen, not being Ministers of State, would hold an office of profit under the Crown."[50] The politico-constitutional doubt (as distinct from the legal-constitutional misgiving) felt by the same Prime Minister he expressed this way:

> "The system of having Assistant-Ministers is not altogether satisfactory. I have felt myself since I became Prime Minister, and I am quite sure some of my predecessors must have felt the same thing, that it is desirable that everybody who sits in Cabinet should sit in Cabinet as a Minister of State with specific responsibility for some department of State and with accountability to Parliament for the way in which he administers that Department."[51]

Actually assistants from the ranks of parliamentarians have been appointed to help hard-worked Ministers, without any suggestion that they should sit in Cabinet. In 1938 Prime Minister Lyons appointed Assistants to the Treasurer and the Defence Minister. In 1942 two "honorary assistants," J. J. Clark and Alex. Wilson, both Members of the House, were appointed to help the Minister for Commerce and Agriculture, and three, R. James, C. Morgan and D. Watkins, to work with the Minister for Labour and National Service.[52] These Labour Government appointments almost certainly were attributable to the pressure of war administration, but they may also have owed something to the pre-war experiment of the New Zealand Labour Government:

> "An interesting change has been made in Cabinet organization. Each Minister has the power to co-opt another Member of Parliament to assist in conducting some special branch of the department, in this way making use of technical knowledge in the Party. For example, Dr. MacMillan assists the Minister for Health and Education with the health insurance legislation, and J. A. Lee has charge of the rehousing scheme. Cabinet salaries are pooled and a proportion set aside for these co-opted members."[53]

No amount of even efficient and expert assistance of this sort will, however, really save from critical attack a Minister who himself fails to display the personality, energy and capacity to cope with his many-sided duties. He requires at least a moderate share of the same qualities of sound judgment, sense of proportion, flexibility, imagination and moral courage which have already been indicated as part of the essential make-up of a Prime Minister. He must find a happy medium between domineering and merely presiding over his Department. Most Departments are not particularly worried about the ideological tendencies of their Minister so long as he is firm about his

decisions, lets it know where it stands, returns loyalty for loyalty, conducts conferences and committees in a business-like way, and does not scatter contrary and uninformed press statements up and down the country. He will prosper publicly in proportion as he masters the modern techniques of press conference, utilization of "official spokesman," press "hand-outs" and the judicious use of the few occasions and avenues of patronage which remain to Commonwealth Cabinet ministers. Above all, he must at least give the impression of regular contact with and understanding of the people, and an easy, unaffected manner with his own constituents in particular. In a country of great distances like Australia, the work of a Minister is not rendered easier by the fact that the press and interests of the several States watch jealously to see whether they receive as much attention and as many favours from him as do neighbouring States.

IV

Cabinet collectively has found its work greatly facilitated by the establishment of a regular Cabinet Secretariat. The idea came from Britain, where the "Times" said of the British Cabinet Secretariat under Sir Maurice (afterwards Lord) Hankey that "it became not only a central clearing house of information and intelligence but the instrument which gave continuity and cohesion to the councils of the State."

A tentative effort at imitation was made in the days of the Bruce-Page Government, but on the defeat of that administration the incoming Prime Minister, J. H. Scullin, discontinued the practice. In reminiscing ten years later, J. H. Scullin described his methods as running along the following lines. There was neither formal arrangement of agenda by his Department, nor keeping of general minutes. He himself ran out an informal agenda of items he wished to have discussed, together with matters of which colleagues happened to have given him some prior notice. Sometimes, however, he would have just his own items, in which case his habit was first to despatch them and then ask colleagues, in order of seniority or of their seating at the Cabinet table, whether they had business to bring forward. Occasionally memoranda were circulated beforehand, but this was not a general practice. One of the junior Ministers kept brief secretarial notes of actual decisions. Scullin recalled that these were not lodged with the Department afterwards but were locked away by the recording Minister. Matters were referred by the Ministers concerned to their Departments for action. Only very occasionally was an adviser or public servant called into Cabinet to supply expert advice or urgently needed detailed

information: they always left promptly and before Cabinet finally reached and recorded its decision.

When the Scullin Government gave way to the Lyons-Page Ministry at the beginning of 1932, Martyn Threlfall, private secretary to Prime Minister Lyons, was instructed to reinstitute a Cabinet Secretariat along the lines of the Bruce-Page experiment.[54] As Threlfall's account is a most rare exception to the silence and shadow which surround the innermost mechanism of the Executive of the Commonwealth it bears reproduction at some length:

> "The Cabinet Secretariat is exclusively concerned with questions of method. Its business is to prepare, and keep up-to-date, a Cabinet agenda for the use of the Prime Minister, who then decides on the relative urgency of the various items; to see that explanatory memoranda on the various items on the agenda are circulated as much in advance as possible to Ministers, so that they have an opportunity of informing their minds on the subjects to be decided; and, finally, to keep an indexed record of the decisions arrived at.... The practice has been for one Minister to be deputed to note in the briefest manner the affirmative or negative [decision on each item] and for the officer in charge of the Secretariat to be handed these pencilled notes for formulation into more precise language.... Before this system was introduced, members of the Cabinet usually met with little documentary material and sometimes only a vague idea of what topics would arise.... A Minister who has an important matter arising within the sphere of his department to bring before Cabinet has now the opportunity of preparing a Cabinet paper and circulating it with the agenda.
>
> "The weakness of the present [practice] lies in the recording of decisions. The Minister responsible for this in Cabinet is himself an exceedingly busy man with his own departmental work. Moreover, he may not be trained in the precise formulation of minutes.... The Cabinet is the mainspring of executive action, and the danger of the present system, whatever its merits, is that the authorities who have to put the wheels of government into motion may not know exactly what is the decision to which they have to give effect."

Whether during his visit to Australia at the time of the Melbourne Centenary Celebrations, Lord Hankey's advice was sought on the development of a Commonwealth Cabinet Secretariat is not known but it would seem very probable. (Certainly Sir Frederick Shedden, Secretary of the Department of Defence, when in London for the Imperial Conference in 1937, investigated British War Cabinet practice and as a result had the later Australian procedure and machinery modelled on it.[55])

Two more developments remain to be noted. Though the reinstitution of a Cabinet Secretariat may have been thrust by Prime Minister Lyons upon his private secretary, the Secretariat gravitated from his personal staff to the Prime Minister's

Department. Secondly, under his successor, R. G. Menzies, the final major step was taken in following the British model—a high and responsible public servant, the Permanent Head of the Prime Minister's Department, was brought into Cabinet meetings as Secretary to Cabinet.

This final development did not come about easily. In March, 1939, the press learnt that a suggestion had been made to Cabinet by Prime Minister Lyons that a senior public servant, J. F. Murphy (afterwards Secretary of the Department of Commerce), should be admitted to Cabinet meetings as Secretary to Cabinet. He made the suggestion "for the purpose of expediting and co-ordinating the work of the Cabinet, recording Cabinet minutes and advising departments of decisions." The traditionalists looked on the regular presence of an outsider throughout Cabinet meetings and the more formal keeping of minutes, even of decisions, by such an outsider as something like a constitutional revolution. The proposal, rightly described as "a radical departure from current Australian practice" in the press, was dropped overnight—for the time being.[56] While few officers had ever actually entered Cabinet meetings, even for questioning or to give expert advice, senior departmental officers are usually standing by. When in February, 1939, Cabinet met in Hobart—as a political gesture to Tasmania and a personal gesture to J. A. Lyons—some 60 Ministers and officials are said to have travelled to the meeting.[57]

Despite Lyons' failure to have a Secretary to Cabinet appointed in March, 1939, F. G. Shedden was appointed later in the year not only Permanent Head of the new Department of Defence Co-ordination but also Secretary to War Cabinet. Soon afterwards, apparently with little or no publicity, the Permanent Head of the Prime Minister's Department, Mr. Frank Strahan, became Secretary to Full Cabinet in the full sense in which Prime Minister Lyons had sought to establish the office. When Labour returned to power under John Curtin in 1941—and later under J. B. Chifley from 1945—the new practice was continued. The same officer, Mr. Frank Strahan, retained the post, with the right to assign a specified deputy to take over the recording work in Cabinet if he should himself be out of reach of, or be called away from, a meeting of Cabinet.

In no case is any statement of a Minister recorded; decisions are recorded as briefly as is consistent with intelligibility; and each individual decision is given a minimum circulation to Ministers concerned closely with the issue decided. Prime Minister Curtin is said to have insisted on circulation of agenda and memoranda sufficiently early to ensure that Ministers have a real opportunity to consider them before coming to the Cabinet table. In cases of submissions involving finance, the Treasurer was to be consulted before items were so much as listed on the business sheet.

The Secretariat of Cabinet, unlike the Secretariat of War Cabinet which was lodged in a policy-making Department, tended to limit itself very strictly to the sheer mechanics of sustaining the despatch of Cabinet business by circulating agenda and memoranda and recording and circulating decisions. In very large measure it leaves to responsible Ministers and their Departments the "follow-up" action upon decisions and the convening of Cabinet Sub-Committees. Any tendency towards a more active role might lead again to the "bottleneck" situation which in Prime Minister Hughes' day, as recalled above, met with the private criticism of the Governor-General.

There are still delays and deferments of decision-making by Cabinet, which is not surprising when members sit down with anything up to sixty items represented by three to four inches of agenda and memoranda before them.[58] Cabinet committees and inter-departmental committees appointed to give further consideration to some items are apparently not all equally prompt and diligent in discharging their responsibilities. In recent years there have been, at any one time, a dozen or even a score of "ad hoc" or standing committees of Cabinet formally in existence. Cabinet and its committees are, in turn, fed not simply by individual Ministers and their departments, but increasingly by a large and ever-changing network of inter-departmental and expert committees, surveying, recommending and pre-digesting solutions of problems confronting the Government.

From time to time Prime Ministers have laid it down that questions and proposals shall not be submitted to Cabinet until submitted to all Ministers and departments concerned for consideration, discussion and, wherever possible, agreement. Beyond this stipulation the Prime Minister, unlike certain State Premiers, apparently exercises no prerogative as to what appears on a particular business sheet—which is made out by the Secretariat on the basis of submissions received from all Ministers. That this system is or can be made effective even in most abnormal times the history of War Cabinet, Production Executive and of the inter-departmental advisory committees related to them during the Second World War offers fairly conclusive proof.

Provided members of Cabinet are reassured that a genuine multi-committee system is operating and not simply a form of "Inner Cabinet" arrangement, as in the case of the Lyons experiment of November, 1938, or in Andrew Fisher's clumsy and short-lived efforts of 1910 to exclude King O'Malley from the inner councils of Cabinet by calling other Ministers together for unofficial and unannounced discussions of policy issues, Cabinet will function both smoothly and efficiently. Certainly

if such committees can bring in a high percentage of agreed reports, the time required to be devoted to Full Cabinet meetings can be greatly reduced. A series of Cabinet committees is much more likely to make thoroughly considered decisions than is Full Cabinet, except perhaps on the most general issues.

While there is a clear case for a system of more or less "ad hoc" committees of Cabinet, set up to consider particular submissions and given secretarial service by the department of the immediately responsible Minister, there is quite as strong a case for the existence of at least three major standing committees of Cabinet—a Defence Committee, an Economic Planning Committee and an External Policy Committee. The first of these already exists in the Council of Defence which has succeeded the War Cabinet of the Second World War. The work of these committees would be best co-ordinated if the Prime Minister could be chairman of all three.

There have been various public suggestions for a general reorganization of portfolios and departments and of the structure of Cabinet. A Cabinet of nineteen has been held to be over-large for the most effective consideration and despatch of business. The requirements of administration and the advantages of a compact Cabinet could be reconciled, according to this line of argument, if the British provision for extra-Cabinet portfolios were adopted. Thus there might be a Cabinet of twelve and an additional fifteen Assistant Ministers or Parliamentary Secretaries occasionally on call to Cabinet on specific questions and regularly on call to Cabinet Committees dealing with subjects related to their particular spheres of responsibility. The new structure of Cabinet might, for instance, be somewhat as set out in the following table (though it will be noticed that this arrangement is liable to create friction by reintroducing one form of the "Inner Cabinet" distinction which has caused trouble before):

Cabinet Minister. (and principal responsibilities as far as Cabinet is concerned).	Assistant Minister in charge of.	Cabinet.	Assistants.
Prime Minister			
Cabinet Secretariat Economic Secretariat Public Service Board Australia House, London	—	1	—
Treasurer			
Taxation Department Prices Department Customs Department Loan and National Works Councils	Taxation and Customs	1	1

Cabinet Minister. (and principal responsibilities as far as Cabinet is concerned).	Assistant Minister in charge of.	Cabinet.	Assistants.
External Affairs			
External Affairs Department Australian Posts Abroad	—	1	—
External Trade			
External Trade Department Information Department	Information	1	1
Industry			
Supply (including Aircraft Production) Department	Supply		
Civil Aviation Department Transport and Shipping Department	Transport (including Civil Aviation and Shipping)	1	2
Interior			
Commonwealth Territories Department			
External Territories Department	External Territories		
Immigration Department	Immigration	1	4
Works and Housing Department.	Works and Housing		
Postmaster-General's Department.	Postal Services		
Welfare			
Social and Health Services Department	Health		
Education Office	Education	1	3
Aborigines Department	Aborigines		
Defence			
Army Department	Army		
Navy Department	Navy		
Air Department	Air Force		
Repatriation Department	Repatriation	1	4
Agriculture and Fisheries	—	1	-
Labour	—	1	—
Vice-President of the Executive Council (With special responsibility for Commonwealth-State relations)	—	1	—
Attorney-General			
Attorney-General's Department Patents Office Crown Solicitor's Department Commonwealth Police and Security Branch	—	1	—
		12	15

V

Immediately upon the outbreak of the Second World War in September, 1939, a War Cabinet of six members drawn from Full Cabinet was designated by Prime Minister Menzies in acknowledgment of the wisdom of Lloyd George's dictum that "you cannot run a war with a Sanhedrim." These Ministers who became members of War Cabinet all had administrative responsibilities, and were in fact selected because of the relationship of their administrative fields to the immediate conduct of the war. Two months later the number in War Cabinet increased to eight, all having administrative responsibilities. On December 11, 1941, Prime Minister Curtin completed appointments to his War Cabinet, membership of which remained at eight, though two Ministers sat in dual capacities. The members of the Curtin War Cabinet were the Prime Minister (and Minister for Defence), the Treasurer, and the Ministers for Army, Navy (and Munitions), Air, External Affairs, Supply and War Organization of Industry.

R. G. Menzies on September 18, 1941, informed the House that:

> "The Department of Defence Co-ordination [later, of Defence] is . . . . responsible for the whole of the secretarial work of War Cabinet, which is very heavy and extensive, the secretarial work for the Advisory War Council, certain 'review' work on agenda submitted to the War Cabinet, and initial executive action on War Cabinet and War Council decisions. . . . The permanent head of the department has extensive responsibilities as the secretary of the War Cabinet and of the Advisory War Council."

The role of the War Cabinet Secretariat was chiefly distinguishable from that of Full Cabinet by its more active executive nature, very necessary in the circumstances.

Two events in the history of War Cabinet are of special interest. On February 4, 1942, the State Premiers, then attending a Premiers' Conference at Canberra, were invited to and did attend a meeting of War Cabinet. The conferences of State Premiers with Commonwealth Ministers and Opposition Leaders from August 11–14, 1914, and of State Premiers and Opposition Leaders with Commonwealth Government and Opposition Leaders from April 12–19, 1918, can hardly be reckoned precedents for this invitation to an actual Cabinet meeting.

On August 27, 1942, Prime Minister Curtin announced that he had co-opted a leading member of the Opposition, Sir Earle Page, to War Cabinet membership so that his "knowledge and experience gained as special representative of the Commonwealth on the British War Cabinet and the Pacific War Council might be available in dealing with the conduct of the War." It was, however, explained that "Sir Earle Page will have no right to

vote at War Cabinet meetings, but will be free to take part in discussions. Service chiefs are in a somewhat similar position."[59]

War Cabinet was finally disbanded on January 19, 1946, and the powers vested in it reverted to Full Cabinet. In its six and a quarter years of existence, War Cabinet held 354 meetings, dealt with some 3,977 agenda and recorded 4,624 minutes.[60] While the War Cabinet disappeared, its place was partly taken by the Council of Defence, "a statutory peace-time body," to which some ten Ministers and the Service Chiefs are under regular summons, while other Ministers and officers can be summoned according to the nature of current business.

During the war years 1939–1945 three attempts were made to constitute a committee of Cabinet with somewhat similar status in the economic and production field to that of War Cabinet in regard to the actual waging of war. Only at the third attempt was success achieved.

On November 11, 1939, Prime Minister Menzies announced the constitution of an "Economic Cabinet" with a membership of the Prime Minister, Treasurer and Minister for Supply and Development (who constituted a triple link with War Cabinet), the Postmaster-General, the Ministers for Trade and Customs and Commerce, and the Assistant-Minister for Commerce—to which was added, on April 11, 1940, A. W. Fadden in his dual role as Assistant-Treasurer and Assistant-Minister for Supply. On November 21, 1939, the Prime Minister announced that he had appointed Sir Ernest Fisk as Director of Economic Co-ordination and Secretary to the Economic Cabinet. This appointment was unprecedented. Sir Ernest Fisk was neither parliamentarian nor public servant but the managing director of a radio and communications firm in which the Commonwealth had a part interest. During his secretaryship of the Economic Cabinet his salary continued to be drawn from his company and his expenses only from the Commonwealth. The Prime Minister described the Economic Cabinet as "in effect . . . . a business committee of the Full Cabinet, entrusted with the duty of carrying out the business side of the war."[61] Though the burden of war administration rose steadily the Economic Cabinet withered away steadily in the months immediately following the reconstitution of the traditional United Australia Party-United Country Party coalition in March, 1940. The Treasury was the principal legatee of the work formerly done by the Economic Cabinet.

Prime Minister Menzies tried again in 1941. At the end of June he announced the appointment of an Economic and Industrial Committee of Cabinet "to expedite the handling of business on the economic side of the war and to promote better co-ordination in the economic policy of the Government," and insisted that it was "not merely a committee of report but one

of action like the War Cabinet."[62] The Prime Minister did not himself undertake chairmanship or membership. The Treasurer became chairman, the other members being the Ministers for Supply, Commerce, Labour, Social Services, Trade and Customs, Transport and War Organization of Industry. The link with the Prime Minister was primarily maintained through the secretary of the Economic and Industrial Committee, who was Professor D. B. Copland, Economic Consultant to the Prime Minister. This committee suffered a premature extinction with the fall of the Menzies and Fadden Governments in August and October, 1941.

The third and successful experiment was the Production Executive of Cabinet set up by Prime Minister John Curtin in November, 1941 "to parallel in the organization of the home front the functions of War Cabinet in regard to the conduct of the war itself."[63] Curtin especially charged this Cabinet body with responsibility for devising "a settled policy and a workable plan in regard to manpower, production and financial resources."

During the four years of its operation, "Production Executive" considered and made decisions upon some eight hundred submissions which were either brought before it by the Ministers who comprised its membership or referred to it by Full Cabinet or War Cabinet. Its chairman was the Minister for War Organization of Industry, J. J. Dedman, strongly supported by J. B. Chifley, the Treasurer, who was the confidant and successor of Prime Minister Curtin. The Secretary of Production Executive was the Permanent Head of Mr. Dedman's department, who maintained a secretariat to ensure business-like arrangement, discharge and implementation of the Executive's work. The Production Executive Secretary appears to have followed the more active role of the War Cabinet Secretariat rather than the purely recording and "post office" role to which, as a matter of principle, Full Cabinet Secretariat had restricted itself.

The Advisory War Council was an unprecedented outcome—unprecedented at least so far as the Commonwealth was concerned—of the persistent but desperate hope and of the ultimately acknowledged failure of Prime Minister Menzies to draw the Labour Party into an all-party wartime coalition government. Equally it was the symbol of Labour's willingness to associate itself in disinterested support of war measures necessary for victory, so long as it did not therein tie itself to unnecessarily conservative domestic compromises which would very promptly split the party from top to bottom. The history of the First World War was for Labour the history of the wrecking of its triumphant party on the conscription issue and its exclusion from office for the twelve years and from power

for the twenty-seven years which followed that melancholy event. Labour Party leaders were determined to avoid any occasion for a repetition of that history.

When the expedient of an Advisory War Council was proposed by Opposition Leader Curtin in July, 1940, the Government replied that:

> ". . . . it feels that an advisory council whose advice is to be worth anything must have knowledge at least equal to that of the Cabinet, and that it is unreasonable that such complete and confidential knowledge should be given to a body which accepts no responsibility for decisions made or action taken."[64]

Or, as a sometime member of the Menzies Government said in another connection in 1941:

> "It is a long-accepted principle of British parliamentary procedure that men are either in the Government and accept responsibility for its actions, or they are outside the Government and make comment on what is done. There is no half-way house."[65]

But John Curtin had a politically compelling answer—all the more potent after the 1940 election, which left Prime Minister Menzies precariously dependent on the votes of two Independents for command of the House. He argued that the Prime Minister was already making available to him personally highly confidential war information and that he in turn was shaping his advice to the Labour Party on that information. But he was an individual and it was too much to expect the Party, week in, week out, to trust his judgment, and his alone, upon secret information of which they knew nothing. Mr. Menzies himself did not do that; he had Cabinet colleagues beside him when he met the Government caucus. Why not set up an Advisory Council with equal Government and Opposition membership; the Labour representatives would then constitute an informed group within their party and as a group their judgment upon secrets discussed at the Advisory War Council would be more readily accepted over the long period than would the judgment of an individual, John Curtin, on information fed to him by the Prime Minister? The Opposition was thus more likely to be discreetly restrained in criticism of matters with secret war significance.

Any such possible assurance of a more self-restrained Opposition becomes tempting to a Prime Minister in reduced political circumstances such as those of R. G. Menzies after September, 1940. His hold on both Parliament and the members of his own Coalition had seriously diminished. At the same time he had presumably not lost hope that if he accepted the Advisory War Council idea the Labour Party, or at least its leaders, might become reconciled or tempted to taking the further step to an all-party coalition in which they would share not merely counsel

but power, and hence responsibility. From October, 1941, until the general election of 1943 Prime Minister Curtin was in a similarly precarious parliamentary position and doubtless also welcomed what relief was afforded him by the working of the Advisory War Council.

The Advisory War Council came into being on October 23, 1940, and continued in existence through two changes of Government and a general election, until, with the cessation of hostilities in August-September, 1945, it was promptly wound up. While the Council weathered the falls of the Menzies and Fadden Governments in 1941 and was, if anything, more firmly settled in its operation by the outbreak and development of the war with Japan, strains within the leading Opposition component, the United Australia Party, led to the defection of that Party from the Council after the Labour general election landslide in 1943. But at the cost of their membership of the decaying United Australia Party, ex-Prime Minister Hughes and ex-Treasurer Spender remained in the Council along with representatives of the Labour Government and of the Country Party. As the Labour Government held an overwhelming command of both Houses from 1943 onwards the importance of the Advisory War Council, in real as distinct from formal political terms, declined noticeably from that of its heyday in 1940–43.

The position of successive Oppositions' representatives on the Council has been described by A. W. Fadden:

> "The business the Council is called upon to consider is determined by the Government. On certain questions views have coincided with those of the Government, while on others they have differed. On some very important matters a decision has already been made by the Government —these matters only come before the Council for its information. While it is not open to an Opposition member of the Council to use in any manner information which comes to him in his capacity as a member of the Council, he is justified in directing criticism on any matter in which the Opposition members have not concurred."[66]

Prime Minister Chifley revealed that, in all, the Advisory War Council held 174 meetings in five years, dealt with some 727 agenda (including 325 War Cabinet agenda referred to it for information or comment and advice) and recorded some 1,618 minutes.[67]

The War Cabinet Secretariat provided the secretariat of the War Council also. The Opposition members of the Council were afforded personal secretarial assistance and certain expenses and transport facilities on a near-ministerial basis.

The Advisory War Council was at best in itself a very limited success; but the circumstances in which it operated prevented its being more than that. It gave the people of Australia some token of an all-party unity which underlay the actual conduct of the war. But it was essentially the outcome and continuing

occasion of party manoeuvre for political advantage. It did give official sanction for putting leading Opposition Members "in the picture" as far as the day-to-day planning and execution of the war was concerned. But as soon as the leading Opposition party felt it could do more electoral and parliamentary good for itself by ceasing to have any connection with it, Opposition Leader Menzies and his party stepped out. In so doing they revealed to all what had already been apparent to many: that the Council was an intrinsically unwanted offspring of an unhealthy parliamentary situation of near-deadlock in a time of national emergency.

CHAPTER VIII

THE CROWN AND THE GOVERNOR-GENERAL

> "We are not prepared to interfere with the cardinal principle of our constitution, and that is that the nominal head of the government should be only the nominal head of the executive and not become a real, substantial legislative force in the community."
>
> *Sir John Downer.*

> "We regard with little favour the title . . . . which appears to the active politician to be little better than a glittering and gaudy toy."
>
> *Alfred Deakin.*

> "It was pointed out that his highest function would be to be a dummy, and that although he was the only link between us and the Crown, in being that link he was less than the least in the whole of the colonies—a useless image and a bauble."
>
> *John Cockburn.*

SIR GEORGE GREY suggested to the 1891 Convention that the Governor-Generalship, the principal purpose of which is local representation of the King as national executive in Australian constitutional and parliamentary processes, should be an elective office rather than one filled by Royal appointment:

> "this great office shall be open at all times to that man in Australia who is deemed the greatest and worthiest and fittest to hold so noble a post."[1]

Election might well have provided the Commonwealth with a succession of able and distinguished Chiefs of State. But it would almost certainly have failed to provide, either formally or substantially, any direct link with the Crown. Yet that link would appear logically and in practice to be rendered essential by the peculiar role of the Crown in the Imperial theory which, in its maturity, has been given constitutional force in the Statute of Westminster, 1931.

The champions of responsible government in the Convention had, however, fundamentally stronger—and, at the same time, more practical—reasons for opposing any suggestion of an elective Governor-General. First, the British system of responsible government does not require and would be easily upset by any elective principle which would provide for a Chief of State a basis for independent popular authority on the strength

of which he might choose to defy his elected Ministers and Parliament.[2] Secondly, the whole of British constitutional history points the moral that the King or his representative best serves the parliamentary system when he is not or is no longer in politics himself nor is the object of factional intrigue. Even Sir Samuel Griffith, who in 1891 had American leanings in not a few constitutional matters, felt bound to demur at Grey's proposal on the latter ground:

> "I am to a great extent in sympathy with the object desired by Sir George Grey. I believe the highest offices of the State ought to be open to its own citizens, but I do not think it follows that the necessary way to bring this about is to provide that the Governor-General shall be directly elected by the people. . . . If you have a direct election of the President by the people, or such an indirect election as has been substituted for it in the United States, the practical result would be that, at every election of the Governor-General, there would be a canvassing throughout the whole Dominion or Commonwealth by the representatives of the respective parties."[3]

By the time the Second Convention met in 1897 Sir George Grey and New Zealand generally had passed from the federation scene. Cockburn, one of the only two supporters Grey had rallied in 1891 even for keeping open the question of an elective Governor-Generalship now asked simply that some means be found for taking "Australian opinion" on appointments to the office. In 1897 it was promptly settled that the office be appointive and hence constitute no ultimate check or balance upon the expression of the popular will by Parliament or Cabinet. The Governor-General is in fact appointed by the King on the advice of his Ministers—originally of his British Ministers, no doubt after some consultation with the Australian Government. He is liable to recall on the same advice.

In 1930 the Imperial Conference recognized that:

> "The parties interested in the appointment of a Governor-General of a Dominion are His Majesty the King whose representative he is, and the Dominion concerned. . . . The Ministers who tender and are responsible for such advice are His Majesty's Ministers in the Dominion concerned."

Not only did this change meet Cockburn's request of 1897 to the full but it also further weakened the position of the Governor-General. In his dealings and any differences with his Ministers the Governor-General now has neither the independence nor scope for initiative which might spring from popular election, nor even that which might be derived from appointment by the King on the advice of his *British* Ministers. He is now dealing with men who have in fact appointed him and can at any time (so long as Parliament will stand by them) retire him into private life. He is no longer "the representative or agent of

His Majesty's Government in Great Britain or of any Department of that Government." They have their own representative in the person of the British High Commissioner.

This is not, however, the position of the Governor-General as envisaged by most of the founders of the Constitution. Thinking particularly of the provisions for disallowance (Sections 58–59) and for reservation (Section 60), Quick and Garran wrote in 1900:

> "It would not be correct to say that the Queen's share in the exercise of federal authority will be altogether formal or nominal."[4]

The powers of her representative, the Governor-General, they described as falling into two groups:

> "The first group includes powers which properly or historically belong to the prerogatives of the Crown, and survive as parts of the prerogative; hence they are vested in the Governor-General as the Queen's representative. The second group includes powers either of purely statutory origin or which have, by statute or custom, been detached from the prerogative; and they can, therefore, without any constitutional impropriety, be declared to be vested in the Governor-General-in-Council. But all those powers which involve the performance of executive acts, whether parts of the prerogative or the creatures of statute, will, in accordance with constitutional practice, as developed by the system known as responsible government, be performed by the Governor-General by and with the advice and consent of the Federal Executive Council."[5]

The principal powers and functions of the Governor-General as set out in various sections of the Constitution can be briefly summarized. He represents the Crown in its Australian aspect and the executive authority of the Commonwealth internally and before the world. He is nominally Commander-in-Chief of the Australian armed forces. He commissions successive Prime Ministers. He formally appoints the Ministers of State and administers the oath of office.[6] He summons, prorogues and dissolves Parliament, summons joint sittings of the two Houses, and may grant a double dissolution in the event of an inter-House deadlock. He recommends to Parliament the appropriation of revenues and moneys. He assents to Bills, may refer them back to Parliament with suggestions for amendment, or reserve them for the King's pleasure. He appoints judges to the High Court and may remove them upon receipt of addresses from both Houses of Parliament.

While in the early years of the Commonwealth the Governor-General was sometimes able to exercise a little actual personal discretion in the performance of certain of these functions, the line of evolution of the party system in the Federal sphere, the resolutions of the Imperial Conferences of 1926 and 1930 and adoption of the Statute of Westminster by Australia in 1942, have stripped away most of his prerogative and discretionary powers in practice almost to vanishing point. The discretion

perforce exercised by the Governors-General in the first decade of the Commonwealth because of the existence of three really independent parties in the early Parliaments can be reckoned an historical accident: it could not have survived the development of the two-party, or virtually two-party, system. The resolutions of the Imperial Conferences of 1926 and 1930 and the adoption of the Statute of Westminster practically wiped Sections 59 and 60 and half of 58 out of the Constitution. To-day his principal powers are exercised and functions performed, probably without exception, on the advice of his Ministers. As Deakin foresaw in 1891, the Governor-General has been placed by both the written and conventional elements of the Constitution in a position where:

> "He may cling to his principles with an ardour and devotion equal to that of any other man, but he of all men in the community is the one who is debarred from the privilege of doing anything to advance them."[7]

For the rest, he is in the position very well described by an early Governor-General of Canada, Lord Dufferin:

> "My only guiding star in the conduct and maintenance of my official relations with your public men is the Parliament of Canada. I believe in Parliament, no matter which way it votes; and to those men alone whom the deliberate will of the Confederate Parliament may assign to me as my responsible advisers, can I give my confidence. Whether they are heads of this party, or that party, must be a matter of indifference to the Governor-General, so long as they are maintained he is bound to give them his unreserved confidence, to defer to their advice, and to loyally assist them with his counsels. As a reasonable being he cannot help having convictions on the merits of different policies, but these considerations are abstract and speculative and devoid of practical effect in his official relations. As the head of a constitutional State, engaged in the administration of Parliamentary Government, the Governor-General has no political friends—still less can he have political enemies. The possession, or being suspected of such possession, would *destroy his usefulness.*"[8]

There is a striking similarity between this statement and the opening passages of a memorandum prepared just forty years later by Lord Esher for the guidance of King George V in the Ulster crisis. Moreover, Esher's memorandum, at least that part of it quoted below, follows closely another prepared simultaneously but independently by Prime Minister Asquith and so may be reckoned to represent a concensus of political opinion in England on the position of the monarchy whose representative the Governors-General are. The opening passage of Lord Esher's memorandum defines the King's position as follows:

> "Every Constitutional Monarch possesses a dual personality. He may hold and express opinions upon the conduct of his Ministers, and their measures. He may endeavour to influence their actions. He may delay decisions in order to give more time for reflection. He may

> refuse assent to their advice up to the point where he is obliged to choose between accepting it and losing their services. If the Sovereign believes advice to him to be wrong, he may refuse to take it, and if his Minister yields the Sovereign is justified. If the Minister persists, feeling behind him a majority of the people's representatives, a Constitutional Sovereign must give way.
>
> It is precisely at this point that the dual personality of the Monarch becomes clear. Hitherto he has exercised free volition, he has used his prerogatives of criticism and delay, of personal influence and remonstrance. At a given moment, however, when he is forced to choose between acquiescence and the loss of his Ministers, the Sovereign automatically, under the Constitution which by the Coronation Oath he has sworn to maintain, ceases to have any opinion. The King can do no wrong. This cannot be said of anyone who is a free agent. Within certain limits, and under certain circumstances, the King ceases to be a free agent. Hence the meaning of the pregnant phrase, the King can do no wrong. With due regard to the security of the Throne, the Sovereign cannot retain the final right of private judgment. Has the King then no prerogatives? Yes, he has many, but when translated into action they must be exercised on the advice of a Minister responsible to Parliament. In no case can the Sovereign take political action unless he is screened by a Minister who has to answer to Parliament. This proposition is fundamental. . . .'[9]

There is one material difference between the position of the King and of the Governor-General which should be noticed at once. Not only is the Governor-General's term a limited one (usually of about five years) but he can be recalled even within that term by the King on the advice of the Ministers in whose power advice on appointments lies. If a Governor-General forces a dissolution or dismisses his Ministers without their consent or against their advice and they are subsequently sustained by Parliament or the electorate, the recall of the Governor-General will almost certainly be sought by them and almost as certainly granted by the King.[10] What may be a personal crisis for the Governor-General in question is, however, unlikely to be a danger to the office he holds. But if the King himself in Britain made a similar "error of judgment" he might, under some circumstances at least, place the whole institution of monarchy in jeopardy, for there is no simple device of "recall" where an hereditary monarchy is concerned, though abdication might save the Throne.

It is clear, then, that the principal issues with which any King or Governor-General has to deal are those of dismissal of Ministers and dissolution of Parliament.

During the first decade of the Commonwealth, Governors-General three times refused dissolutions requested and advised by their Ministers—by Watson on August 17, 1904; by Reid on July 5, 1905; and by Fisher in June, 1909. All three Prime Ministers had just lost the confidence of a majority of the House, which was in any case in an unstable state with three

parties competing for office. It would therefore appear that the Governors-General were justified in these instances in refusing the advice of the defeated Prime Ministers at least until they had explored the possibility of a workable arrangement (whether by coalition or otherwise) between the two parties in opposition. Two comments by George Reid may throw further useful light on the point. Of the refusal of Watson's request in 1904, he writes:

> "Mr. Watson asked Lord Northcote to give him a dissolution but the request was refused, chiefly, no doubt, because of the smallness of the difference between our amendment and the concession Mr. Watson was willing to make, and because the House was in its first year."[11]

And of his own case in 1905 Reid comments:

> "The practice in the Dominions is quite different from that in Great Britain. His Majesty's Ministers in England have their own way in such matters. It is not so in the Dominions."[12]

The Fisher Government in the crisis of June, 1909, made by Cabinet Minute a very strong plea to the Governor-General. This Minute contained a point concerning the possible unequal incidence as between parties of a vice-regal refusal of dissolution:

> "We have already mentioned that we are not supported by the public journals of the Commonwealth, and we now desire to submit to Your Excellency that an appeal to the people, which to a Party having a powerful Press at its service may be without inconvenience postponed, is to your Advisers, who have not the direct support of any daily paper —and, what is more, are subject to daily misrepresentation of their acts and motives, and to the suppression of those facts by which public opinion might be informed—a matter of most serious and urgent moment; and must enable the policy of your Advisers and the action of members violating their express pledges to the people, and the Opposition in declining to deal with this upon its merits, to be placed before the people for their decision."[13]

Since the parliamentary struggle has been effectively reduced to a contest between Labour and anti-Labour, Australian practice appears to have followed more nearly the British pattern, which Berriedale Keith sums up in these terms:

> "The practice in the United Kingdom in this regard is perfectly clear. The Crown expects not lightly to be asked for a dissolution; but it will grant a dissolution when advised by Ministers, without seeking to find an alternative Ministry."[14]

By a coincidence the term of office of the Governor-General probably most informed and meticulous in matters of British practice and precedents—Munro-Ferguson (1914–1920)—contained several occasions for particularly careful handling of parliamentary or ministerial crises. He arrived in the middle of Sir Joseph Cook's calculated provocation of an inter-House deadlock as the occasion for a double dissolution. The double

dissolution was granted by the Governor-General on the advice of his Prime Minister, who, while faced by a hostile Senate, continued to maintain his precarious hold on the House of Representatives.

On that occasion the Governor-General, not without reason perhaps in view of his having only just arrived in Australia, consulted the Australian Chief Justice, who actually prepared a written memorandum on the constitutional considerations for the Governor-General. Prime Minister Cook was aware of this move and apparently said that he was "very willing" that the Chief Justice's advice be sought.[15] The Governor-General also asked the Prime Minister whether he might consult the Leader of the Opposition before giving any decision, but Cook (probably very correctly) was opposed to the idea. Chief Justice Sir Samuel Griffith's view[16] is of importance, both as it bears on Section 57 generally and as it deals with the position of the Governor-General:

> "An occasion for the exercise of the power of double dissolution under Section 57 formally exists whenever the event specified in that section has occurred, but it does not follow that the power can be regarded as an ordinary one which may properly be exercised whenever the occasion formally exists. It should, on the contrary, be regarded as an extraordinary power, to be exercised only in cases in which the Governor-General is personally satisfied, after independent consideration of the case, either that the proposed law as to which the Houses have differed in opinion is one of such public importance that it should be referred to the electors of the Commonwealth for immediate decision by means of a complete renewal of both Houses, or that there exists such a state of practical deadlock in legislation as can only be ended in that way. As to the existence of either condition he must form his own judgment. Although he cannot act except upon the advice of his Ministers, he is not bound to follow their advice but is in the position of an independent arbiter."

Whether or not the Governor-General in theory had that margin of discretion in 1914, the decision which Munro-Ferguson in fact took, combined with precedents in Britain and Australia since 1914 and the transactions of the Imperial Conferences of 1926 and 1930 and of their committees, seems to suggest that any Prime Minister with a majority in the House but a minority in the Senate must now receive from the Governor-General approval for a requested double dissolution, even if the measure which is the occasion of the deadlock were unimportant and "manufactured" to bring the necessary situation about.[17] As the Governor-General himself on that occasion replied to the Senate's protest against dissolution:

> "I have submitted to my Advisers the Address. . . . I am advised by them that the request therein contained . . . . is one the compliance with which would not only be contrary to the usual practice, but would involve a breach of the confidential relation which should always exist

in this as in all other matters between the representative of the Crown and his constitutional Ministers. I am advised further that to accede to the request contained in your Address would imply a recognition of a right in the Senate to make the Ministers of State for the Commonwealth directly responsible to that Chamber for advice tendered to the Governor-General in relation to the exercise of an executive power vested in him by the terms of the Constitution, and that such a recognition would not be in accordance with the accepted principles of responsible government.''[18]

Despite the energetic exposition of views to the contrary at that time there was no gainsaying this defence of the proper working of the system of responsible government by the Commonwealth Government.

The war, and more particularly the political moves and countermoves over conscription, brought the Governor-General (Munro-Ferguson) continual difficulties. During the first conscription crisis of November, 1916, the Governor-General refused to give Prime Minister Hughes an open authority to wield the threat of dissolution over the House of Representatives. He protected his own position and what he maintained was his discretionary power by saying that he would first wait to see whether some stable Government were attainable before giving any undertaking as to dissolution.[19] Just one year later the Governor-General felt it necessary to rebuke Hughes for allowing him to learn at second-hand through the press of the decision to take the second conscription referendum. He maintained that as the King's Representative, who had at that time to keep not only His Majesty but also the British Government informed on Australian affairs, he should have been officially informed by Hughes, personally, or by Cabinet Minute, at the very earliest moment.[20]

Before the vote was taken on the second conscription referendum Prime Minister Hughes pledged himself publicly to resign from office if the conscription proposal were rejected by the people. This was seen by many as a challenge to the electorate either to vote ''confidence'' or ''no confidence'' in the Government much as at a general election.

''The Government's pledge as to its course of conduct in the event of a referendum defeat might reasonably have been regarded as extending to an undertaking either to advise the dissolution of the House of Representatives or to make way for an administration that would so advise. Further, the pledge might even have been regarded as warranting the Governor-General's dismissal of the then Ministers unless such dissolution was advised and the consequential grant of a commission and immediate dissolution to Mr. Tudor, the Leader of the Labour Party.''[21]

In the event the Governor-General was not prepared to hold Hughes precisely to his pledge though the latter submitted his resignation. He explained his reasons to the House of Represen-

tatives in a Memorandum which Hughes read to Members for the Governor-General on January 10, 1918, in announcing his own re-commissioning:

> ". . . The Governor-General considered that it was his paramount duty (a) to make provision for carrying on the business of the country in accordance with the principles of parliamentary government, (b) to avoid a situation arising which must lead to a further appeal to the country within twelve months of an election resulting in the return of two Houses of similar political complexion, which are still working in unison. The Governor-General was also of the opinion that in granting a commission for the formation of a new administration his choice must be determined solely by the parliamentary situation. Any other course would be a departure from constitutional practice and an infringement of the rights of Parliament. In the absence of such parliamentary indications as are given by a defeat of the government in Parliament the Governor-General endeavoured to ascertain what the situation was by seeking information from representatives of all sections of the House with a view to determining where the majority lay, and what prospects there were of forming an alternative Government."[22]

And, as he metaphorically washed his hands of the whole affair, the Governor-General sustained himself with the comforting thought that, in his own words:

> "the representative of the Crown was not the keeper of the Government's conscience, and that the obligation that rested on him was to follow constitutional practice by taking cognisance only of the parliamentary situation and of the strength of the parties in the House."[23]

The same Governor-General was considerably distressed later in 1918, fearing loss of prestige and status for his office, when Prime Minister Hughes found unanimous support at the Imperial War Conference for a motion reading as follows:

> "This Conference is of the opinion that the development which has taken place in the relations between the United Kingdom and the Dominions necessitates such a change in administrative arrangements, and in the channels of communications between their Governments, as will bring them directly in touch with each other; and that the Imperial War Cabinet be invited to give immediate consideration to the creation of suitable machinery for this purpose."[24]

Hughes' motive was, of course, the desire for direct communication with the British Prime Minister instead of contact through the Colonial Office and the Governor-General. The Governor-General, with some justification after some of his experiences with Hughes, felt he might cease to hear all that went on if he ceased to be a link in the communications channel and might consequently find himself at some time or another unable to offer fully informed advice to His Majesty.

Two further dissolution issues arose in 1929 and 1931, both, it will be noted, after the work of the Imperial Conference of 1926 in the field of Imperial relations. The Governor-General

now held "in all essential respects the same position in relation to the administration of public affairs .... as is held by His Majesty the King in Great Britain."[25]

In 1929 Lord Stonehaven, despite the fact that Parliament was in its first year and that the Government had been defeated on the floor of the House, granted a dissolution at the request of the Prime Minister.

> "Neither the Prime Minister nor the Governor General, so far as their correspondence discloses, paid any attention to the 'parliamentary situation' in the older sense of the doctrine that the House should be exhausted before a dissolution is granted. But it should be pointed out that the form of the amendment carried by the House of Representatives itself suggested a submission of the Bill to the people, either at a referendum or at a general election. In the circumstances the House could properly be regarded as having not only authorized, but invited, its own dissolution, especially as the Bill had previously been declared by the House to be an urgent measure."[26]

In 1931 the situation was of interest for three additional reasons. The 1930 Imperial Conference had carried further the trends in Imperial constitutional development so substantially advanced at and after the Imperial Conference of 1926; the Statute of Westminster had been passed in Britain (though not yet adopted in Australia); and the Governor-General of the day was the first Australian to hold the office. Sir Isaac Isaacs accepted the Prime Minister's advice for a dissolution because he felt such acceptance to be the logic of the new Imperial constitutional theory. But he added, in his explanation read to Parliament:

> ".... There are considerations which tend to support the acceptance of the advice tendered to me. They are such as the strength and relation of various parties in the House of Representatives and the probability in any case of an early election being necessary."[27]

H. V. Evatt felt, however, that the Governor-General was not bound to accept advice under the circumstances without further exploration of the parliamentary situation:

> ".... He [the Governor-General] would certainly have been justified in getting in touch with the other party leaders, including Mr. Beasley, particularly as the latter disclaimed any intention of doing more than forcing an inquiry into a subordinate aspect of Government administration."[28]

The Government had, on the other hand, chosen to regard the issue as a vital challenge; but even that fact would probably not have precluded the Governor-General from seeking other parliamentary advice than that of the defeated Prime Minister.

In 1941 Prime Minister Fadden apparently relieved the Governor-General from determining the issue involved in the request of a defeated Prime Minister for a dissolution by advising instead that the Leader of the Opposition be sent for to see

whether he could carry on the government of the country—which he consented to do and in fact succeeded in doing.

After the questions of dissolution of Parliament and dismissal of Ministers, the vice-regal function of most significance under the Constitution has been that of assenting to Bills. The Governor-General has always been required to assent to Bills passed by both Houses in order to complete the legislative process and to give each measure legal force following proclamation. He may, under Section 58, return a Bill to Parliament with recommendations for amendment.[29] But, as Senator O'Connor explained to the first Senate on the first occasion when a measure (the Electoral Bill, 1902) was returned in this way with suggested amendments:

> "Of course, this is a power which is exercised under the advice of the Government and of the Attorney-General. It is only exercised in cases where the amendments to be made involve no matter of principle, but are simply corrections necessary to make clear the intention of the Legislature."[30]

The Governor-General was also given discretion under the same Section of the Constitution to reserve laws for the Sovereign's pleasure. This provision was included to cover in particular navigation and related laws which might, under the Colonial Laws Validity Act, 1865, the Merchant Shipping Act, 1894, or the Colonial Courts of Admiralty Act, 1890, clash with Imperial legislation on the same subjects. In the early years of the Commonwealth incidents under this head did occur. There were two of special interest.

The Customs Tariff (British Preference) Bill, 1906, was reserved by the Governor-General under Section 58 for the Royal Assent. Under the same Section it was referred back by the Governor-General for amendment. At the same time the Senate used its power under Section 53 to "request" amendment. As the British Government felt that the Bill would embarrass it in certain treaty relations it had established with regard to shipping rights, Assent was not given and the Bill was not proceeded with. A more complicated situation arose in connection with a Bill of 1914 amending the Judiciary Act:

> "The necessity for reserving the amending Bill was at first overlooked and the Bill was presented to and received the assent of the Governor-General on the 29th October, 1914. Later, someone discovered the necessity for reservation because of the insertion of the one clause dealing with Admiralty jurisdiction. Thereupon the Bill was sent to England for the King's assent, which was given on the 7th September, 1916. The first problem which then arose was whether a Bill once consented to by the Governor-General so as to bring it into force could subsequently be reserved for the King's assent. The second problem was even more serious for, although the King's assent was given on the 7th September, 1916, by the time that assent was communicated to the Commonwealth and proclaimed in the Gazette, it was the 16th November, 1916. Thus,

> the two years prescribed by Section 60 of the Constitution within which the King's assent to reserved Bills must be proclaimed had been exceeded by eighteen days."[31]

That difficulty was resolved only in 1939—twenty-five years afterwards—when at the outset of another war a further Judiciary Bill was passed and promptly given the Royal Assent. On the latter-day necessity for reservation Dr. Evatt wrote in 1942:

> "It serves no useful purpose because it would not be in accord with constitutional practice for His Majesty to refuse assent. Still the practice, in spite of this, must, under threat of invalidity, be continued until the adoption of the relevant sections of the Statute of Westminster."[32]

Actually Australia adopted the Statute of Westminster, so far as it had application to her, by an Act of 1942 and so freed herself from practically all the substantial—or formal—restraints and limitations upon her sovereignty.

Another incident, in which no question of reservation arose, is of very considerable interest as showing the effect of the development of Imperial constitutional theory upon the relationship of the Cabinet and the Senate. The Scullin Government (1929–1932) was in a minority in the Senate. In 1931 it made certain regulations under the Transport Workers Act which were disallowed by the Senate when tabled. When the Parliament adjourned at the end of the week the Government reimposed the regulations until the Senate, on reassembling after the parliamentary long week-end, disallowed them again. When this was repeated the Senate protested that, with delegated as with direct legislation, it should not be in order to put forward again in the same Session what had, in substantially the same terms, already been once rejected. In the face of this protest the Governor-General, Sir Isaac Isaacs, stood by the Government:

> "It cannot be doubted that normally by constitutional practice, confirmed, and perhaps strengthened, by the pronouncement of the Imperial Conference of 1926, I am bound to act upon the advice of my Ministers."[33]

Dr. Evatt's summing up of the incident as it effects the Governor-General's position is this:

> "[It would] tend to create the principle that constitutional practice excludes from the consideration of the Governor in any Dominion the determination of all legal questions because direct responsibility for the action of the Governor in assenting to Bills or any proposed administrative act rests upon the Ministers holding office. . . . He is on perfectly safe ground if he allows all legal questions which are at all susceptible of argument to await determination at the hands of the judicial power. If he intervenes in the matter *against* Ministerial advice the result will usually be to prevent the Courts from exercising their jurisdiction by deciding the legal questions in dispute."[34]

The history of the Governor-Generalship in the first forty-five years of federation is thus a history of gradual but constant encroachment upon the initially very restricted personal initiative and discretion of its incumbents. In becoming ever more innocuous and politically unobtrusive it has provided an ever more satisfactory keystone to the constitutional arch. It provides a dignified ceremonial leadership to the government and the nation; it offers an adequate symbol of national unity and continuity above the day-to-day warfare of parties. Many States in Europe and beyond over the past century would have counted themselves well served by such a solution of the problem always presented by the office of Chief of State.

CHAPTER IX

THE PUBLIC SERVICE

". . . . The new wants of a new age have been met in a new manner. . . . We are becoming a much-governed nation, governed by all manner of councils and boards and officers, central and local, high and low, exercising the powers which have been committed to them under statute."

F. W. Maitland.

"[The developing body of administrative law betokens] a loosening of the rigid system of inflexible private rights, enforceable in the courts of law almost regardless of social consequence, which for centuries have been gradually consolidating. . . . Absolute rights of property and contract, of individual activity and personal freedom, enforceable in the courts of law regardless of the social needs, have given way to qualified rights conditional on the extent to which they are compatible with the common good, as interpreted by administrative authorities exercising judicial power."

W. A. Robson.

"We have reached the point where, under the Commonwealth Constitution, modelled so much on that of the United States, the 'separation of powers' doctrine applies only to a limited extent. Its limited application may be said to be the result of the modern growth of administrative law, which has helped to destroy the old cliches and platitudes, and has illustrated the insuperable difficulty of finding a complete and satisfactory line of demarcation between the exercise of legislative, administrative and judicial functions."

Mr. Justice Evatt.

I

THIS chapter is concerned with two aspects only of the Public Service, each of which is very intimately connected with the working of democratic parliamentary government. The first concerns the activities and influence of the senior policy-formulating officers of the Commonwealth Departments who, with their close assistants, number perhaps three hundred. The second is the place of delegated legislation and of administrative law in the Commonwealth's political structure.

Where, first of all, do the key men of the Commonwealth administration come from?

When the Commonwealth came into being, certain State Departments, notably the Customs and Postal Departments, were taken over entirely and their officers generally transferred

with them. Where new Departments, such as that of the Attorney-General, had to be built up, Ministers of the first Cabinet tended to choose key men from the services of their own States. A few men active in the Federation campaign, of whom Sir Robert Garran is the most eminent, became officers of the Commonwealth.

In 1902 the Commonwealth Public Service was given a statutory basis complementary to the provision made for it in the Constitution itself. It was placed under the general control of a Public Service Board of Commissioners with a considerable degree of independence, rather than of the Treasury as in Britain. Though Alfred Deakin sought to combine in the Commonwealth Public Service "statutory control with an infusion of something of the spirit and energy of private business affairs," he actually provided for recruitment by competitive examination upon terms which tended to draw boys who had just left school at 14 or shortly thereafter, with little secondary school education and less experience of business. Careers in the service under those conditions do not appear to have been highly prized and there is little evidence that many schools, with the exception of certain of those under the Roman Catholic Church, encouraged or specially trained boys for the Commonwealth Public Service examinations.

But many able men who came to the service in this way, and not least those who were recruited as messengers in the extensive Postmaster-General's Department, rose to high positions and filled them successfully.

For the first forty years seniority remained, however, a potent factor in determining promotions and salaries remained unattractively low. There was frequent criticism of the failure of the conditions obtaining in the service to attract or hold sufficient men of a high standard. In 1920, for instance, Sir Harrison Moore complained that:

> "The system is based on a conception of public administration as clerical service under a political head, a conception which becomes more inadequate every year as the functions of administration extend. Its defects would be more glaring than they are if the greater freedom of choice allowed for filling technical or professional positions did not furnish a means of introducing into the Service some men of education and proved talent who are then often put into responsible administrative posts."[1]

After the First World War, a new element appeared in the service. From 1916 returned soldiers were accorded preference and special examination concessions for new appointments. The Commonwealth Public Service Commissioner's Report for 1934 shows that, between 1918 and 1932, of 1,779 admissions as junior clerks only 49 were youths. 1,031 were returned soldiers from outside the service and 699 were from the lower (fourth)

division, of which number most if not all would also in that period have been returned soldiers. Successive Commissioners in their reports and elsewhere have criticized the effect of the absolute preference system over such an extended period on the quality and age-composition of the public service. This was recognized by the Official Historian of the First World War, C. E. W. Bean, who wrote that:

> "The efficiency of the Australian Federal Public Service at the outbreak of the present [Second World] War was also hampered by the fact that, under the particular form of preference for returned soldiers between the two wars, recruits for most of the service had for half a generation been exclusively old soldiers—a procedure that not infrequently turned first class tradesmen into second class clerks."[2]

But it is equally true that from the ranks of returned soldiers came many men who filled positions in the higher public service with distinction.

During the great depression of 1929–34 senior university economists came prominently to the fore as economic advisers to Australian Governments, and not least to the Commonwealth Government. Prime Minister Menzies has expressed the view that:

> "The prime function of the economist is not to be an administrator and not to provide the ultimate answers to questions which must always be mixed questions of economics and politics, but constantly to keep before the minds of those who have to determine these questions, the scientifically collated objective facts, and the normal operation and trends of the related economic principles."[3]

Several of the senior economists made their marks and subsequently became either permanent or war-time advisers, and even administrators, within the Commonwealth structure.

It was still felt, however, that "we may have geniuses as expert advisers, and archangels as Ministers, but their efforts will be stultified by a poor quality of civil servant."[4] It was increasingly realized that more than an occasional professional or technical man must be introduced. Accordingly in 1933 the Public Service Act was amended to provide that one-tenth of each year's appointments should be open to university graduates under the age of twenty-five. The need for men with training in economics and statistics, or with training suitable for Australia's foreign service, increased rapidly from 1933 and reached a point during the Second World war when at least temporary appointments existed for all available graduates of reasonable merit. Not all have been equally successful amongst graduate appointees, for a degree is by no means a passport to administrative success; but in the short period since 1933 graduate appointees have come to fill responsible posts in many Departments. It now appears that senior posts will increasingly be filled by men who either have graduate status before entry into

the service or acquire it by part-time study after entry. In addition there is a growing provision for research personnel in most sections of the Commonwealth administration which will call for a steady flow of graduates in economics and related subjects.

The Second World War brought a further considerable element into the Commonwealth service, usually on a "duration" basis. This element came from private business or industry. Some were the most powerful industrialists and financiers in the country—some were even Australian executives of local subsidiaries of great foreign corporations—some had been simply salaried officers of commercial and industrial concerns. Many of these men were indispensable and their achievements enormous. Some fitted well into the administrative machine and permanently enriched its common fund of knowledge and technique. Others apparently did not fit so well into the administrative structure. As one critic wrote:

> "Their past experience, their habits of mind, their familiarity with only the industrial and commercial world, will frequently make them most restive and difficult public servants. They have been raised in a competitive atmosphere; they habitually make decisions with a single eye to their special industry; they are accustomed to go their own way, ride roughshod over opposition, and let any rivals look out for themselves. . . . The businessman fails to realize that public administration is something more than merely private administration writ large. He regards, for example, all formalism as an evil, he does not appreciate as someone has said, that red tape is after all not the invention of an idiot, and that more elaborate methods are frequently the more far-sighted, and in the long-run may be the most efficient. . . . The businessman who enters the service has yet another handicap to surmount: he must develop what his civil service associate would call a sense of responsibility. The 'captain of industry' sometimes feels that he has been called in to rescue the country from disaster, and that he is, therefore, free to go ahead with his own pet solutions for the country's ills and have them always endorsed and supported by the political authorities. But he will find that the Ministers also have their ideas on many of these subjects, and they are considering many influences and consequences which he considers to be unimportant. He will doubtless demand with bitterness and no little vehemence that his proposals must be accepted. . . . Yet his stake in the venture is quite negligible compared with that of the Minister."[5]

In some of the new fields into which governmental activity generally, and the activities of the Commonwealth Government in particular, have recently penetrated, business and industrial training is essential. In those fields sympathetic insight into industrial and business methods and requirements will be necessary. Even there, however, governmental enterprise cannot carry on precisely as can private corporate concerns.

In the field of general Departmental administration, "comparisons between the methods of efficiency of the Civil Service

and those of large-scale industrial organizations which ignore the detailed and sometimes deliberately hostile criticism to which the former must continuously submit, are unreal and unfair."[6] Business managers and industrialists are not publicly accountable for their every act and for the acts of every one of their employees as is a Cabinet Minister. They can act the more promptly for that. Parliamentary questions and scrutiny are essential features of responsible government, but their existence inevitably slows down administration and, it has been suggested, even tends to render some departments "timid and ineffective in action." A private or corporate enterprise is not subject to this intensive public scrutiny: its officers consequently develop an entirely different approach.

So much, in very brief survey, for the fourteen-year-old recruits, the returned soldiers, economists, graduates and business men, who have made up the Commonwealth Public Service. All these elements have contributed departmental heads or senior advisers who have provided the expertness and continuity essential in administration.

Some actual estimate of their contributions to the recent leadership of the service can be made from the following rough analysis of the records of forty men who were in 1943 heads of Commonwealth Departments and major agencies. These forty men included 5 temporary officers and 3 State officers called in on account of the war emergency and their inclusion noticeably affects the first point in the analysis, namely, ages at entry to the Commonwealth Service:

Age at entry.	Percentage.
14–15	17·5
16–18	32·5
19–23	20
24–35	10
Over 35	20

The analysis shows that 75 per cent. attended State primary schools, the remainder passing through church primary schools of various denominations. About 85 per cent. of the 40 received *some* secondary school education, the division between State and church schools being about equal. Just over 50 per cent. received university or some broadly equivalent professional training before or after joining the service. 15 per cent. appear to have had some overseas university or professional training, while most had had at least a little overseas official experience. About 30 per cent. were returned soldiers. The same proportion had some record as officers of a State Government prior to joining the Commonwealth Service, though the extent and nature of the experience varied very greatly. Two only had significant

experience in private business, three had considerable records in university teaching and one had made a successful career in the newspaper world.

It is clear that the service trend is towards higher standards of education and training, but it is also clear that at no time has the Commonwealth Public Service, in its higher levels, been liable to the criticism that it is recruited from a narrow social or economic class, educated for the most part at a select group of schools or at particular universities. The fact that the higher positions in the service will inevitably be filled to an increasing extent by the men with the higher educational qualifications does not in itself portend any retreat from democracy, so long as the current trend towards equal educational opportunities is maintained. "The cult of mediocrity," as Walter Lippmann puts it, "is not democracy but one of the diseases of democracy."

II

It would be difficult nowadays to overstress the amount of Commonwealth policy-preparation which goes on in the Public Departments incidentally to or arising from administration. Proposed policies, so formulated out of the experience and foresight of men in constant administrative contact with the facts and circumstances, have then to run the gauntlet of Ministerial and often Cabinet examination. Some of the proposals emanating from the Departments go to Parliament itself in legislative form, but the bulk of them are finally accepted, amended or rejected at the Ministerial and Cabinet levels. It is in addition usual for measures to be considered by the Caucus of the Government Party before presentation to Parliament; many matters finally decided by Cabinet are also discussed with the same body.

An annual output of fifty or sixty Acts is reckoned a fair performance by the Commonwealth Parliament, whereas Cabinet may record 600 or 1,000 minutes in the same time, and Ministers take thousands of lesser decisions regarding details of the policies of their respective Departments. The senior departmental officers will, often after obtaining Treasury concurrence, take further thousands of decisions on routine matters—these may affect particular citizens just as much as decisions taken at higher levels, though they will usually represent only secondary or tertiary policy-making, within the terms of more general decisions taken on at least the Ministerial level. The Minister and the Cabinet are answerable for all such administrative decisions to Parliament and, through Parliament and the ballot, to the nation.

It is proper that administrators—who represent an element of continuity in the executive structure—should supply the

bases for general policies, embodying the fruits of their experience, for the consideration of their Ministerial chiefs. This capitalization of administrative experience is desirable whether or not the parliamentary party behind the Government organizes itself, in committees or otherwise, to provide the Cabinet with a steady flow of detailed policy proposals—and, in Australia, parties have not been conspicuously successful in organizing themselves for that purpose, more especially since 1918. Quite apart from the question of general policies it is inevitable that decisions on many administrative details must be formulated by the actual administrators. No Cabinet or parliamentary party has the time or continuous organic contact with administration to enable it to do all this work.

While these functions must inhere in administrators, Cabinet must continue to accept responsibility for all decisions and Parliament the role of public watchdog against caprice, injustice, anomaly and hardship. All administrative policy proposals or decisions, and the action taken upon them, are liable to be raised and challenged in Parliament. They are made or taken with that possibility well in mind and that is the surest and most immediate safeguard the people possess.

Little of this development in the role of the permanent administrator is really new, though the degree to which the trend has been accelerated in the present century is very great indeed. A former Lord Chief Justice of England deplored it as "the new despotism"[7] and Dr. C. K. Allen condemned it as "bureaucracy triumphant."[8] W. A. Robson, though prepared to concede even that "the centre of gravity in English Government has shifted from legislation to administration,"[9] calmly regards the trend as essentially healthy and inevitable. The Gladstone Professor of Government in the University of Oxford, who happens, like Dr. C. K. Allen, to be an Australian, calls the new stage of governmental evolution which has been reached "parliamentary bureaucracy" and rates it as "the ideally best form of democratic government for a modern industrial State."[10]

So great has been the opprobrium deliberately attached to the term "bureaucracy" for party-political purposes in Australia that only with the greatest circumspection would anyone use it in a work like the present. Moreover, so long as Parliament remains an active and uninhibited watchdog over administration—here is another field where the Senate might perhaps exert more of its unexpended or potential energies—and so long as Section 61 of the Constitution roundly pins final executive responsibility as well as authority on Cabinet Ministers, it would be premature to conclude with certain notorious Sydney "bureauphobes" that Australia has been overwhelmed by a bureaucratic revolution. Indeed, most Australian Ministers

with any considerable experience can still fairly endorse Herbert Morrison's testimony:

> "My experience of civil servants was that they were cautious to the point of nervousness in the use of Ministerial powers, that they were always anxious to consult with and propitiate, where possible and proper, bodies affected by a proposed Ministerial order; that they were anxious not to outrage public opinion; and that they were greatly concerned to preserve the legitimate liberty of the subject. Although it was my business as a politician to be sensitive to public opinion, I often thought that the civil servants were excessively cautious in these matters; more than once I felt it my duty to set their fears aside."[11]

Insofar as there has been a shift of emphasis to administration it has come neither from the abdication of parliamentarians nor the "coups" of public servants. It has emerged inevitably and naturally, in the material and economic circumstances of this century, from the efforts of the Australian democracy to transmute private into public power the more effectively to ensure the greatest good of the greatest number. Long-term development planning and economic planning with implications for future Parliaments and Cabinets throw a heavy responsibility on the senior permanent administrators. Commonwealth planning machinery, moreover, is still for the most part only experimental and incomplete. A great deal more thinking requires to be done on the multilateral relationships of Ministers, parliamentarians, advisers and administrators in the general and particular fields where long-term economic policy must be thrashed out. Two world wars and a great depression have, however, demonstrated to Australians that the capacity for initiative and imagination in the permanent officers must be equal to their sheer technical ability.

Despite the relative geographical isolation of some of the departmental headquarters in Canberra, their senior officers are travelling a great deal, constantly in touch with interested groups of many shades of opinion in the community, and normally making far broader examinations of all the issues involved than do many interested public groups. Very often indeed the administrator is working to protect the broad public interest, to balance the less articulate consumer interest against the organized and importunate groups of self-interested producers.

> "The volume of ill-will which the bureaucrat can accumulate by reason of his unwillingness to grant special favour not within his power because of the laws, the regulations and the supervision placed there to prevent it, is very considerable. Some officers are peculiarly exposed to such solicitation, but few officers escape it wholly. Therefore, the bureaucracy consolidates, develops an

> *esprit de corps*, and, as it were, organizes to defend itself. This attitude enrages the public, enrages most of all the seeker of special and irregular favours, but, in general, the public interest is thus safeguarded."[12]

The big business man in particular has been counter-criticized as crying out (or stimulating others to cry out) against alleged governmental "regimentation of industry" because he wants to be left alone to regiment industry in his own monopolistic way. He has been described as crying out about governmental harassing of small business because he wants to eliminate or tie up small business in his own way. He calls for a crusade against "bureaucratic control" while his own development produces a chain of private industrial, business and banking bureaucracies of ever-increasing proportions and of very considerable rigidity which

> "make no pretence of internal exercise of their powers according to principles of democracy. They provide no genuinely popular choice of either governing personnel or policies. They enforce no bills of rights to restrain the activities of their officers. They do not resort in any genuine sense to federalism or to the separation of powers or to the principle of control by laws and not by men."[13]

Governmental "co-ordination" and "liaison," and not least the strong "Treasury control" over all current expenditure, are for some people the occasion of alternate merriment and irritation, while in the same minds the potentially much more sinister counterparts in big business (trustification and cartelization) are somehow suffused with a public-spirit benevolence.[14]

A former United States Secretary of the Interior, Harold Ickes, ironically defined a bureaucrat as "that man in public office who at least insists upon knowing what you want before he says 'yes,'" and speculated on "how many business men would be willing to take some of our government jobs at the accepted rates of pay and suffer the annoyance, the unfair and unjustified attacks that are implicit in the epithet 'bureaucrat' and the lack of privacy that are the price, as distinguished from the rewards, of public service."[15] It is no more surprising that the Gladstone Professor of Government, K. C. Wheare, should conclude that "the State has to have a bureaucracy sufficiently large and skilled to hold its own with, if not to control, these other [private] institutions."[16]

Contact with the leaders of the Commonwealth Public Service fails to reveal any real substance in the much publicized charge that they act upon the principle that "the people exist for officialdom, not officials for the people." Seekers after power in a predominantly "liberal-capitalist" society ordinarily look elsewhere than the public service. Amongst those who rise in the service few seek and many shun new powers and responsibilities, which will only make life more arduous and work less

congenial. There may be a few exceptions, but Cabinet, which is jealous of its authority and vitally concerned about its standing in the electorate, can normally be relied upon to check its over-zealous administrators. Too much zeal may, moreover, lead to the tendering of wrong or misleading advice. It has, for instance, been suggested that W. M. Hughes was misled in 1916 and 1917 by his military advisers as to the numbers of A.I.F. recruits and reinforcements required, a costly mistake in the event for the Labour Party, if not for Prime Minister Hughes personally.

The relations between the permanent departmental heads and their transient ministerial chiefs, which are crucial to the successful working of the executive branch of government, are usually easy enough and are in some cases even enriched as time goes on by lasting friendship and genuine affection. In recent years, as the standards of training and expertness of some administrators have raised them markedly above their Ministers in grasp and capacity a certain impatience of the one with the other has at times been rumoured around the Canberra press gallery. But the Minister has himself usually been through a long and tough political apprenticeship and is possessed of special qualities and capacities indispensable to the political side of his office and not unhelpful in the tackling of his administrative task. In any case, whatever his party, he does not normally lack a full measure of loyalty from his officers. The comment of Herbert Morrison is again applicable to Australia:

> "The civil servants like their Minister to do well; they feel personally humiliated if he makes blunders; they take enormous pains to give him all the facts and to warn him against pitfalls. If they think the policy he contemplates is wrong they will tell him why, but always on the basis that it is for him to settle the matter. And if the Minister, as is sometimes the case, has neither the courage nor the brains to evolve a policy of his own, they will do their best to find him one, for, after all, it is better that a department should be run by public servants than that it should not be run at all. It was my task to change the policy which had so far been pursued by the Ministry of Transport. We argued it all out; we examined all the 'snags' which the civil servants found for me and which I found for myself in plenty; but at the end of the discussions when I made it clear what the policy was to be, the civil servants not only gave of their best to make my policy a success, but nearly worked themselves to death in labours behind the scenes, in the conduct of various secondary negotiations. Responsibility for policy rests upon Ministers whether they are weak or strong, and it is important that the civil servants should be the instruments and not the masters of policy. They would have been just as loyal to Conservative Ministers, and that is well."[17]

How much a Minister seeks the assistance of his departmental officers is his own affair: in Commonwealth history there have been and are divergent tendencies and attitudes. It is, how-

ever, noticeable, and to a degree significant, that in recent years Ministers have all sought rooms at Parliament House and have almost ceased, at least when in Canberra, to work, as formerly, in their Departments. In that way they have sought to maintain, or to appear to maintain, a balance in their relations with parliamentarians and officials, in addition to securing readier access to the Chamber and to each other. The main effect of this geographical isolation of Ministers from their Departments as far as officials are concerned has been in most cases to confine more than ever a Minister's contacts to the permanent head of his Department. This is not, of course, uniformly the case.

Some able Australian Ministers have, indeed, leant to Lloyd George's principle:

> "I have never taken the view that the ministerial head of a Government Department is forbidden by any rule of honour or etiquette from sending for any person either inside or outside his office, whatever his rank, to seek enlightenment on any subject affecting his administration. If a Minister learns that any subordinate in his Department possesses exceptional knowledge or special aptitude on any question, it is essential he should establish direct contact with him. The political head of a Department has not merely the right, but the duty to send for anyone who will help him to discharge his trust to the public."[18]

Some have leaned heavily on their departments. Some have been glad to have the quiet assistance of their officers in the delicate business of inter-departmental diplomacy which is clearly sometimes as difficult (or more difficult) at the ministerial level as at the official. Senior and even relatively junior officers whose work touches closely upon policy matters need to and do develop a keen knowledge and appreciation of political situations and tactics.

The interdependence and teamwork of Minister and departmental advisers are now frankly acknowledged at the parliamentary level:

> "An extension of the growth of the parliamentary machine is the practice of having departmental officers inside the Chamber and departmental secretaries in Parliament House. When the Parliament sat in Melbourne this practice was a furtive one, and officials were kept hidden behind the Speaker's Chair, where Ministers could consult them. But when Parliament House was built at Canberra, it was realized that no good purpose could be served by continuing to hide the fact that a Minister is dependent on the officers of his Department, so provision was made for two benches on the floor of the House to accommodate half a dozen officials. These two benches are carefully roped off from the benches occupied by Ministers and Members, but they are only a few feet from where Ministers sit. When a measure is before the House the Minister in charge of it has to listen carefully to the debate in order to be able to meet all points raised and supply any information demanded. To enable him to do this a continuous stream of notes is carried by an attendant from the officials to the Minister."[19]

In June, 1941, the Hon. J. A. Beasley, then in opposition, expressed strong views on the proper relative positions of Ministers and official advisers:

> "I have felt for a long time that there is too great a tendency on the part of the Government to delegate its powers and responsibilities to boards, commissions, committees and tribunals that are not directly responsible to the Government.... I have noted from time to time, that statements emanating from Ministers tend, more and more, to be merely echoes of the ideas and determinations of interests, and frequently vested interests, that have been given far too much control, in my view, over the war effort. . . . If that policy be continued, the Government will soon be in the hands, not of the occupants of the Treasury bench, but of people not answerable to Parliament and obscured from the Parliament's view. . . . I am anxious that the power of government shall remain in the hands of the Cabinet over which Parliament has supreme authority."[20]

The same man was, however, not backward over the next five years, when he held a major portfolio, in utilizing the services of and acknowledging his debt to these same officials, experts and members of boards. His case could be multiplied many times, for the responsibility of office, especially in an emergency, quickly brings any politician to a realization of the extent and complexity which modern government has assumed.

Such instances of criticism followed by appreciation give point to another of Harold Ickes' definitions of a bureaucrat as "a man who belongs to the opposite political party, or one occupying a position that is wanted by someone else." Here in Australia this definition might be broadened to read "a man who is carrying out the policy of the opposite political party," for few Australian public offices are filled under a spoils system. Public servants do not have, officially, any political views and were, until 1945, required to sever their connection with the public service finally before contesting a parliamentary election. About this disability a spokesman of the public service unions fairly protested to the Royal Commission on the Constitution in terms which accurately characterize the overwhelming proportion of public servants:

> "The withholding of civil rights is sometimes defended on the grounds that otherwise there would be frequent conflicts between the desires and interests of the officer as a citizen and his duties as an official, and that such conflicts could not fail to have a disastrous effect on the morale of the Civil Service. This assumes that civil servants actually take *no* interest in politics. This is not the case. Political convictions do influence them and it is better that the facts should be faced. The conflict, however, is not real, for there is no inherent impossibility in public servants holding certain private views carrying out as officials policies the virtue of which they doubt. In practice, the civil servant maintains a high standard of professional impartiality and gives loyal service to all Ministers and parties alike."[21]

In 1945 an amendment to the Public Service Act made it possible for an officer to stand for election and, if unsuccessful, resume his position in the service. Actually there is little reason to expect more than the most occasional use of this provision by the senior members of the Commonwealth Public Service. It is, indeed, more usual for the senior public servant to leave the service to accept a lucrative business or industrial appointment than to seek the arduous hazards of party politics. If the rank-and-file politician sometimes feels a mixture of impatience, hostility and frustration in dealing with departmental officials, the latter sometimes tend to reciprocate with a measure of scepticism, not to say cynicism, as they watch Members turning this way and that on the rack of electoral uncertainty. Perhaps in making their judgments of the two Houses of Parliament some officials pay too much attention to the inevitable by-play of politics and too little to the healthy and constructive achievements of the parliamentary process.

III

Delegated legislation consists, broadly, of "regulations" drawn up by Ministers and promulgated by the Governor-General-in Council, and "orders" made by Ministers or Ministerial nominees (public servants), under the authority of Acts of Parliament. It has long been an established feature of the British legislative and administrative systems. The power to delegate in this way is inherent in the parliamentary system which lies at the heart of the Constitution of the Australian Commonwealth. As one judge of the Australian High Court put the position:

> "The Federal Parliament has, within its ambit, full power to frame its laws in any fashion, using any agent, any agency, any machinery that in its wisdom it thinks fit, for the peace, order and good government of the Commonwealth."[22]

The pressure on parliamentary time, the technicality of many subject matters, the possibility of serious unforeseen contingencies, the need for flexibility and opportunity for what are virtually legislative experiments, all combine to render a great deal of delegated legislation essential in the 20th Century—"the truth is that if Parliament were not willing to delegate law-making powers, Parliament would be unable to pass the kind and quantity of legislation which modern public opinion requires."[23] There is a diminishing opposition to delegated legislation in principle, whatever differences there may be as to its extent and tendencies in practice. Men of practical political or administrative experience recognize both its necessity and its value. Two statements by R. G. Menzies, made under very

different personal and national circumstances and spaced twelve years apart, are fairly representative:

> "In my opinion legislation by Parliament should deal with principles and fundamental rules, and the details of administration should be left to the Executive. I have no great fear of executive legislation provided those principles are observed."[24]

> "If there is any doubt in the mind of Parliament about whether a certain regulation ought or ought not to be approved, then I am prepared to resolve that doubt always in the favour of the executive government, because I believe that it is far better, in a time of war, to err by trying to do too much than to fail by doing too little."[25]

In the history of the Commonwealth Parliament the use of delegated legislation has been widespread and, on the whole, very successful:

> "I examined the Commonwealth Statutes from the inception of Federation until the end of 1928. Using only approximate figures and excluding repealing, amending and appropriation Acts, I found that about 340 substantive Acts had been passed during that period. In just over half of them power is conferred on the executive to make regulations. Then I turned with more care to an analysis of the kind of Acts in which no such power was given. Mostly they were Loan Acts, Acts validating agreements, State grants and a large number of Acts which a jurist would call privilegia—Acts dealing with particular persons, granting gratuities, and so forth. In other words, wherever Parliament could reasonably hand over the work of implementing an Act, it was done. There is almost no exception to that rule. The Acts that are more interesting from the point of view of lawyers and citizens, Acts that laid down duties and conferred rights on the ordinary members of the community, were Acts which left something to be done by regulation. There is one striking and proper exception—The Crimes Act."[26]

There would be general agreement, not only in Australia but also in Britain, with Professor Bailey's approval of absence of a regulation-making power under the Crimes Act—"where personal liberty is involved it is important that every new power given to the Executive should be scrutinized by Parliament in detail."[27] There have, however, been some important exceptions to this view in the history of the Commonwealth Parliament. The Transport Workers Act of 1928–29, for instance, gave wide powers to Ministers to "legislate" by regulation in matters touching important personal liberties. Thus Mr. Justice Dixon said of Section 3 of the Transport Workers Act:

> "It gives the Governor-General-in-Council a complete, although, of course, a subordinate power over a large and by no means unimportant subject in the exercise of which he is free to determine from time to time the ends to be achieved and the policy to be pursued as well as the means to be adopted. Within the limits of the subject matter, his will is unregulated and his discretion unguided. Moreover, the power may be exercised in disregard of other existing statutes, the provisions of which concerning the same subject-matter may be overridden."[28]

While it is essential for the survival and welfare of the democracies that they resort increasingly to delegated legislation, they must have firmly in mind at all times that this power is to be exercised under the authority and the scrutiny of Parliament and that the Executive must, as Herbert Morrison said in a speech at Bradford on March 5, 1944, make its regulations:

> ". . . . under quite specific powers given to it for particular purposes by Acts of Parliament whose objects and methods will have been approved by Parliament. Parliament will exercise powers of supervision and control of this departmental legislation. . . . There must be the utmost possible freedom of discussion among the chosen representatives of the people so that a genuine crystallization of public opinion may take place, followed by a genuine formulation of the national will."

Apart from the danger that delegated legislation does not come properly within the field and extent of delegation provided under the Act, there are dangers of the Act itself being skeletal, of inadequate scrutiny being given by Parliament during its passage to the powers delegated, of the Act being loosely drafted, of the publicity accorded to the delegated legislation being insufficient, of arbitrary use being made of the delegated powers, of there being a more than proper resultant transfer of lobbying and bargaining from Parliament and of law-making from the floors of the two Houses to mere departmental sanctums in Canberra and Melbourne. Moreover, in Australia's case there is the additional contingency, unknown in Britain, that the Act itself may be "ultra vires" the written Constitution. As Mr. Justice Starke put the position:

> "Every legislative Act, regulation or order must find some warrant in the Constitution, though the presumption is in favour of validity. But it is for the courts of law to determine whether the particular Act, regulation or order has any such warrant."[30]

The Australian Parliament, which in any case has not perhaps developed as far as the British Parliament the scope and authority of delegated legislation,[30] has endeavoured to provide against these dangers. Under the Acts Interpretation Act, 1901–41, procedures are laid down in connection with the making of regulations under an Act. It requires that such regulations be notified in the Gazette, setting out the date upon which they take effect, which is not to be such as to render the regulations retrospective in their effect. As to their drafting and publication:

> "Any such regulations should reasonably and intelligibly convey to citizens some adequate conception of the duties and liabilities which they impose. As we are presumed to know our legal duties we should be given a fair opportunity to discover them. This is an important test to apply to regulations."[31]

The Rules Publication Act, 1903, based on a British Act of 1893, had provided that sixty days' notice of intention to make a regulation should be given and the intervening time should be bridged with a provisional regulation. The prescribed notice was to give information as to where copies of the proposed regulation were to be obtained and representations from the public upon it would be heard. (Somewhat exceptionally, Section 13 of the Representation Act, 1905, provided that regulations made under it should have no effect until laid on the table for the prescribed number of days). In 1916 the relevant provisions of the Rules Publication Act became a casualty of the First World War. Once repealed they were never re-enacted. Under the provisions of the Acts Interpretation Act, nevertheless, regulations issued by the Governor-General-in-Council have to be tabled, within 15 sitting days, in both Houses, and are subject to disallowance upon notice given within 15 days in either House. This provision does not, however, apply to orders or proclamations.

In any case, as Sir John Peden reminded the Senate Select Committee on Standing Committee Systems:

> "Members do not, generally, study regulations, and regulations are criticized only occasionally, when they pinch someone who protests to his parliamentary representative. In the absence of that pinch, regulations go through as a matter of course."[82]

The Senate Select Committee recommended that there should be a regular and systematic examination of all delegated legislation tabled in the Senate by a Standing Committee of that House.

> "In the opinion of the Committee the work of the proposed Standing Committee on Regulations and Ordinances would be both preventive and corrective. It would be charged with the responsibility of seeing that the clause of each Bill conferring a regulation-making power does not confer a legislative power which ought to be exercised by Parliament itself. It would be required to scrutinize regulations to ascertain:
>
> (a) that they are in accord with the Statute;
>
> (b) that they do not trespass unduly on personal rights and liberties;
>
> (c) that they do not unduly make the rights and liberties of citizens dependent upon administrative and not upon judicial decisions;
>
> (d) that they are concerned with administrative detail and do not amount to substantive legislation which should be a matter for parliamentary enactment.
>
> It is conceivable that occasions might arise in which it would be desirable for the Standing Committee to direct the attention of Parliament to the merits of a certain Regulation but, as a general rule, it should be recognized that the Standing Committee would lose prestige if it set itself up as a critic of governmental policy or departmental practice apart from the tests outlined above."[83]

The Standing Committee thus recommended was in fact set up by the Senate on March 17, 1932, and itself accepted the proper limitation on the scope of its powers:

> "It was inevitable that many regulations would come before the Committee which, while quite correct in form, gave effect to some item of Government policy of a controversial nature. After careful consideration of this aspect, the Committee agreed that questions involving Government policy in regulations and ordinances fell outside the scope of the Committee. This decision necessarily limited the Committee's activities very considerably."[34]

The Senate achieved another tightening up when in August, 1937, it sought an amendment of the Acts Interpretation (Amendment) Bill requiring the Solicitor-General to issue certificates to the effect that each regulation issued was within the powers conferred by the Act. The Senate amendment was not accepted, but the Minister representing the Attorney-General in that House promised a procedure which has since become well established:

> "I give Honourable Senators an assurance that directions will be issued to all Departments to submit all draft regulations for the consideration of the Attorney-General's Department . . . When this scheme is in operation, all draft regulations will be examined minutely and according to definite legal principles, both as to the matter and form of the regulations."[35]

During the 1930's other checks were introduced. Before 1934, for instance, the Government had power to prohibit the importation of goods by a proclamation which was laid before Parliament for its information without Parliament having a power of disallowance. After 1934 such prohibitions had to be enforced by regulations which were subject to Senate and House of Representatives disallowance in the ordinary way. Even so there are, of course, serious dangers inherent in this form of executive legislation. In 1936 Parliament had just completed a session when regulations were issued implementing what became known as the "Trade Diversion Policy," which seriously injured commercial relations with the United States and Japan. Parliament did not reassemble for almost four months and hence there was no opportunity for either House of Parliament, had it been so minded, to move for the disallowance of these regulations. In such circumstances four months may be a crucial gap.

The House of Representatives has set up no special Committee machinery for examining and reporting on regulations and ordinances in detail. In view of the increasing number and bulk of such measures, even in peace-time, this is to be regretted. The Senate Standing Committee has been by no means an unqualified success but that is the greater, rather than less, reason why the House of Representatives should watch this field care-

fully also. In saying that, no suggestion of bad faith on the part of the Executive Government or its officers is advanced. Gladstone had every reason to boast that "the British Constitution presumes, more boldly than any other, the good faith of those who work it." Notwithstanding that Australia's is a written constitution, it is based on the same presumption as regards the exercise of the discretionary powers of the Executive. As Mr. Justice Evatt summed up on this oft-debated subject:

> "In a controversy such as the present one, it is very easy to use words of praise or blame. But it is of no assistance to speak of 'bureaucratic methods', of a 'fraud on a power', of 'absence of bona fides', of 'subversive proceedings'—there is no limit to the vocabulary. What is called firmness and courage by one, is denounced as obstinacy and despotism by another. It is reassuring to be told that actual bad faith is not imputed to those responsible for the re-issuance of the regulations. Indeed, such a suggestion would give rise to a very grave constitutional question as to whether it is possible to impute want of *good faith to the King's representative, or the King's advisers*, for the purpose of nullifying executive acts performed in the name of the King or his representative."[36]

Or as another commentator has answered the challenge, rather more aggressively than did the learned judge:

> "It has always struck me as curious that criticism of the exercise of delegated legislative powers, both inside the House and out, comes mainly from two bodies—businessmen and lawyers. The bankruptcy courts are a constant reminder that businessmen can make serious mistakes in matters which are nearest their own interests, and yet no one seems to use this as an argument for abolishing private enterprise. The whole judiciary, with its heirarchy of appellate tribunals can be based only on the assumption that judges may make mistakes, or, to put it more charitably, that there may well be differences of opinion on the correct interpretation of the law. But if a civil servant makes a mistake in the exercise of delegated legislative powers, he comes off even worse than a dog to whom the law allows at least one bite, for the critics immediately start to chant in unison that his error shows how indefensible is the whole system."[37]

No reference has been made here to the intensified use made of delegated legislation in time of war under the then immensely increased defence powers of the Commonwealth Parliament and Executive.[38] War-time practice has twice accelerated the trend towards this form of law-making by accustoming Ministers, administrators and Parliament itself to this manner of procedure. During the First World War, as has been shown, the Rules Publication Act and its provisions gave way to more expeditious forms. There was probably no comparable casualty in the Second World War, but modern economic requirements, accentuated by war-time experience, will undoubtedly call forth an increased post-war output of regulations and orders. So long as parliamentary scrutiny, responsible administration, general

publicity and a final resort to the Courts on points of law remain there is no apparent reason why this increase should serve other than the public welfare.

The various Boards and Commissions set up by the Commonwealth to administer particular phases of economic and social policy—and, inevitably, in turn themselves formulating detailed policy—are the objects of a great deal of criticism.

First, there is the attack from relatively disinterested critics who feel that a greater proportion of this detailed policy-making should be carried on by Parliament itself, or at least by Ministers directly and personally responsible to Parliament. They complain that many of these Boards are, within their ambit and terms of reference, laws unto themselves. That is, of course, in varying degrees true, but it is also inevitable. The pressure of work already placed upon most Ministers, and upon Parliament itself during Session, renders impossible any great shift of the actual burden of the work of these Boards back to Ministers or Parliament. There are, moreover, definite advantages in the Board method as against the Departmental method in many fields of administration. The vesting of necessary power in Boards and Commissions only indirectly responsible to Parliament and without liability to have their orders disallowed by either House of the Parliament does clearly place upon the Legislature, and especially upon Cabinet, certain very definite responsibilities in regard to them. The Boards should have clearly defined powers and reasonably detailed—but not crippling—terms of reference. In each case these might well be submitted at the outset to a parliamentary committee for consideration. It is, above all, essential that great care should be exercised in determining the representation upon and the qualities and temperament of the personnel actually appointed to each Board.

The second type of attack upon the Boards and Commissions is that of the immediately interested groups and persons who dislike either the basis of representation, the methods and the policies of these bodies or the general social and economic trends which the increase of such agencies reflects. Primary producers' organizations, for instance, habitually campaign for "greater growers' representation" on marketing boards, in whose policies consumers (in Australia or overseas) are equally interested but upon which they are not always as well represented or organized to press their case. On such Boards, and from the outside, primary producers' organizations have a seemingly natural concern to push their interests beyond what might be termed the point of equilibrium with either the interests of consumers or the interests of the Government (which is interested in sustaining the long-term solvency of the scheme and at the same time the general welfare).

While all interests should be protected in their undeniable right to a full and fair hearing from Boards and Commissions, "ex parte" attacks upon such bodies require the most careful examination before acceptance at anything like face value. While the "orders" of such Boards, unlike Ministerial regulations and ordinances, are not subject to tabling and possible disallowance, parliamentary questions and motions or protests by Private Members or by the Opposition as a whole afford a proper avenue for the voicing of criticism or seeking the redress of grievances. In the nature of the Australian parliamentary system this is no less, if no more, effective than a power to move for the disallowance of "orders."

IV

Those who welcome the increased resort to delegated legislation, subject to proper safeguards, as making possible advances in social and economic welfare usually take an equally positive view of the twin development of decision-making by and through quasi-judicial administrative tribunals. They recognize that "the administrative process is, in essence, our generation's answer to the inadequacy of the judicial and legislative processes,"[39] and that, "without some such discretion, modern government would be procedurally bankrupt."[40] For that reason review machinery has been provided *within the administrative side of the government* under taxation, customs, repatriation, patents and trademarks legislation, and quasi-judicial functions have been vested elsewhere in such officers as the Public Service Commissioner, the Public Service Arbitrator and the Commonwealth Bank authorities. This machinery has been provided to

> ". . . . avoid expense and the delays inherent in the methods of the courts of law. By their freedom from the doctrine of precedent they are *more* easily able to do justice in each particular case. Potentially at any rate, their decisions are based upon the fullest possible specialized and technical knowledge."[41]

There is no reason why such officers and tribunals should not—and there is already evidence of a trend to—develop and evolve safeguards and rules as exacting as those of the courts of law themselves and as scrupulously maintained. For the moment, however, this remains in Frankfurter's phrase, a field of "fluid tendencies and tentative 'traditions'" and in the experimental period it is better so.

Those who still view delegated legislation with hostility or distrust, or accept it unenthusiastically as an inevitable evil, often stand with Dicey in opposition to the development of administrative law.[42] They point to the lack of publicity of both the operation and decisions of the tribunals, to their failure to give reasons for decisions, to their failure to allow hearings at all upon some applications, to their failure at times to seek an

adequate statement of both sides of a case, to the poor standard of officers sometimes placed in these positions of great responsibility and to the lack of a real basis of independence in administrative officers acting in quasi-judicial positions.

> "The strength of the English legal system lies to no small extent in the fact that the judicature is composed of men of unusually high character, of exceptional integrity, and of legal ability beyond the normal. The average judge has never known the subordinating experience of being 'employed', or the attendant liability to be 'dismissed'; he has the assurance and the conscious independence which come from the successful practice of a profession, and he is usually steeped in a traditional veneration for the law and all its works. Although he has to share the imperfections of human nature, he fills his office in a way which makes the judicial process universally respected, and that is no small achievement."[43]

Against this lawyers' criticism of the personnel of administrative tribunals, which obviously in itself has considerable strength, there are many lines of counter-attack. The late President Roosevelt, in vetoing the Walter-Logan Bill, aimed against these tribunals, chose to spend some heavy irony on the lawyers:

> "Many of them prefer the stately rituals of the courts, in which lawyers play all the speaking parts, to the simple procedure of administrative hearings which a client can understand and even participate in . . . . Many of the lawyers still prefer to distinguish precedent and to juggle leading cases rather than to get down to the merits of the efforts in which their clients are engaged. . . . Substantial justice remains a higher aim for our civilization than technical legalism. . . . [To-day] a commonsense resort to usual and practical sources of information takes the place of archaic and technical application of rules of evidence, and an informed and expert tribunal renders its decisions with an eye that looks forward to results rather than backward to precedent."[44]

That approach, though in the particular circumstances well calculated, is by no means fair to all modern lawyers. The President was on more solid and significant ground when he pointed to another group frequently in opposition to the development of administrative tribunals:

> "There are powerful interests which are opposed to reforms that can only be made effective through the use of the administrative tribunal. Wherever a continuing series of controversies exists between a powerful and concentrated interest on the one side and a diversified mass of individuals, each of whose separate interests may be small, on the other side, the only means of obtaining equality before the law has been to place the controversy in an administrative tribunal. Great interests, therefore, which desire to escape regulation, rightly see that if they can strike at the heart of modern reform by sterilising the administrative tribunals which administer them, they have effectively destroyed the reform itself."[44]

In Australia the controversy concerning administrative tribunals has been circumscribed from the outset by the Founders of the Constitution, who were, after all, contemporaries of Dicey.

The provisions they made for the judiciary were concerned less with accommodating imminent administrative trends (which they probably saw but dimly[45]) than with laying a sound foundation for Federal Courts proper. Their provision for the Interstate Commission is perhaps exceptional but hardly invalidates this conclusion. The High Court was quick to seize on the Founders' requirements of life tenure for judges (Sec. 72) and to insist that the judicial power of the Commonwealth could be exercised only by Courts and tribunals whose members have life tenure.[46] This ruling was an immediate and general threat to all tribunals and individuals within the broad field of the Commonwealth administration performing duties which approximated judicial functions. For no administrative officers are appointed on a life tenure in the Commonwealth service.

The High Court, however, found ways and means of reconciling the existence and operation of administrative tribunals, of one or more persons, performing quasi-judicial functions, with their ruling that the exercise of the judicial power of the Commonwealth must be confined to the Courts proper, constituted in accord with Section 72. It acknowledged that, in the words of Mr. Justice Isaacs:

> "There are many functions which . . . . are consistent with either strict judicial or executive action. . . . A right of appeal from the decision of the Permanent Secretary to the Minister whose direction is, after hearing the parties concerned, to govern their rights, is primarily executive. The same right of appeal to a Court is primarily judicial. . . . The power and function of finally determining matters of fact and even of discretion are not solely indicative of judicial action. That is an attribute common to administrative bodies, to subordinate bodies that are adjuncts to legislation, and to judicial bodies. . . . Government could not be carried on without some administrative power of finally determining disputed facts. This is becoming every day more manifest and pressing."[47]

Such a view clearly left room for tribunals and individuals within the administrative branch of government to develop a more or less systematic administrative "law" and procedure. This general view of the Australian position was upheld by the Privy Council which, as Mr. Justice Evatt subsequently summarized the Council's judgment, "finally decided that, under the Australian Constitution, duties and functions resembling those of a strictly judicial character may lawfully be vested in administrative tribunals."[48] In the course of the Privy Council judgment to which Mr. Justice Evatt was here referring, Lord Chancellor Sankey set out certain propositions of immediate interest regarding administrative tribunals:

> "(1) A tribunal is not necessarily a Court in this strict sense because it gives a final decision; (2) nor because it hears witnesses on oath; (3) nor because two or more contending parties appear before it

between whom it has to decide; (4) nor because it gives decisions which affect the rights of subjects; (5) nor because there is an appeal to a Court; (6) nor because it is a body to which a matter is referred by another body. . . . An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court strictly so-called. Mere externals do not make a direction to an administrative officer by an *ad hoc* tribunal an exercise by a Court of judicial power."[18]

Provided Parliament takes care to ensure that the quasi-judicial powers vested in the tribunal, board or individual are assimilated to those of the Minister or his Permanent Head rather than to those of the High Court (or the lower courts) the soundness of the legal and constitutional bases of those agencies or individuals appears to be assured. The High Court retains, of course, the power to examine each individual instance of the delegation of quasi-judicial functions upon its being challenged.

It is undoubtedly arguable that in many instances an appeal should lie to the Courts on points of law, provided that the Courts restrict their activities rigidly to the points of law (admittedly not always easy to isolate) and provided also that the Courts regularly survey and wherever possible rationalize their procedures and hence reduce the cost of appeals to litigants. The existence of these appeals will usually increase the sense of responsibility of the tribunals or officers concerned, though at best appeals offer only secondary assurance of responsibility compared with initial careful selection of the right administrators to handle this class of work.

There is still likely to be a considerable difference of opinion about the significance of the claim of Mr. Justice Evatt in 1936 that, in issuing writs and orders restraining administrative tribunals and officers,

> ". . . . the Courts *merely* protect the Legislature against excessive use of powers granted to an executive or administrative body by the Legislature. When the Court restrains an administrative body from acting *ultra vires*, it is upholding the sovereignty of Parliament."[19] (*our italics*).

Two questions in particular appear to arise. First, as to fact, while such may be the Courts' ideal and perhaps most judges' primary motive, may it not be far from the practical effect of the judicial process in some of these cases? Many competent British and American observers have doubts regarding the correlation of these ideals and practical effects. One instance, that of W. I. Jennings, must here suffice:

> "Judges who interpret legislation inevitably legislate in so doing. . . . That judges have nothing to do with 'government policy' . . . . is a lawyers' fiction, for they are concerned with 'the intention of Parliament', and, if Parliament had any genuine intention it was to give effect to the Government policy that the majority was elected to

support. The difficulty is that the judges' interpretation of the intention of Parliament is sometimes very different from the real intention; sometimes, indeed, it is the exact opposite. What is more, this intention is often discovered years after the real intention has been put into operation. . . . Essentially the difficulty lies in the process of interpretation and in the delay implicit in a system which cannot produce a final decision until some litigant has enough money and persistence to challenge a decision in the highest Court. When private rights are more important than the element of discretion, it is obviously desirable that an impartial judge and not a partial administrator should take the decision; but it is not easy to allot the function to a court if there is a chance that, owing to the rules of interpretation, the bias of the common law against interference with property rights, or the unconscious bias of an individualistic profession, there is a real risk of a policy accepted by parliament being overthrown some years after it has been put into operation."[51]

Against this line of criticism it is shown, equally empirically, that as time goes on administrators and administrative tribunals concerned with particular Acts sometimes gather an impetus and develop a system very decidedly their own and bearing only an imperfect resemblance to the original legislative scope and intent. This being so, the Courts may be in practice the most appropriate—some would say the only adequate—instrument for protecting the individual or interest, on appeal, against injustice due to the divergence from a statute of its ultimate elaboration and application.

But—to come to the second question arising from Mr. Justice Evatt's view—is Parliament justified, or best served, in simply leaving its intention to be interpreted or embroidered in this way by the Courts? In a federation there are already occasions and temptations enough otherwise for particular Parliaments to sidestep their proper responsibilities and for the Courts to strain at or overstep their proper bounds. Might not a Parliamentary Joint or Select Committee on Statutory Rules and Orders, properly equipped with assisting counsel, have immediately submitted to it for perusal (*not* review) all cases in which administrative tribunals have ruled against the individual (and whether or not an appeal on points of law goes to the Courts)? Parliament, and the Government, could then have their attention drawn, by a body of their own Members to decisions apparently at variance with their intentions. Where necessary suitable legislative or administrative action could follow. This procedure need not interfere with the present function of the Courts in this sphere but it could mean that, without introducing undue duplication of function, Parliament was itself active and prompt in the maintenance of its own intentions and authority. The flow of work to this Committee might, for a time at least, be fairly heavy but the main bulk of the sifting could be done by assisting counsel.

Both delegated legislation and the administrative tribunal are instruments inseparable from liberal democracy in the twentieth century and entirely characteristic of social-democracy. They are still challenged by those interests and professions which watch with varying degrees of hostility the evolution of liberal social-democracy in our highly industrial society. Neither instrument can any longer be regarded as on trial: the principle of each—if not all the forms—has been finally accepted by Parliament, the Courts and the people. This has inevitably increased the place and the role of the senior public servants in the political framework and it is still debated whether these new instruments have, on balance, diminished the role of Parliament. It would be more accurate to say that by their use Parliament has increased its capacity, by virtue of which increase alone it can cope with the wider field over which the people now require it to operate.

CHAPTER X

THE HIGH COURT

"The written words of the Commonwealth Bill are but the framework or skeleton to which the living form will be imparted by the interpretations placed upon it from time to time by the decisions of the High Court. That this will be the case may be inferred from the history of the American Constitution, to which, as far as regards the balance between the central and State powers, the Commonwealth bears a close resemblance."

Sir John Cockburn, 1900.

"It is as one of the organs of Government which enables the Constitution to grow and to be adapted to the changeful necessities and circumstances of generation after generation that the High Court operates. Amendments achieve direct and sweeping changes, but the Court moves by gradual, often indirect, cautious, well-considered steps, that enable the past to join the future, without undue collision and strife in the present."

Alfred Deakin, 1902.

"It is the duty of the judiciary to recognize the development of the Nation and to apply established principles to the positions which the Nation in its progress from time to time assumes. The judicial organ would otherwise separate itself from the progressive life of the community and act as a clog upon the legislative and executive departments rather than as an interpreter."

Sir Isaac Isaacs, 1922.

"We believe that the authority of the Commonwealth Parliament as a law-making body has been impaired by the paramount and incalculable power of the High Court in its capacity as arbiter of the powers, and that the responsibility of Parliament and of the Cabinet have been lessened accordingly. Moreover, we believe that the adjudication of political issues by the Court is tending to lessen the Court's prestige, decreasing popular respect for it as an instrument of justice."

Minority Report, Royal Commission on the Constitution, 1929.

I

AMERICAN historians still debate whether or how far the Fathers of the United States Constitution really *intended* judicial review and determination of the constitutionality of national legislation. If they did so intend, is their intention fairly and accurately reflected in the effective "supremacy" of the United States Supreme Court since Marshall over the other branches of government in constitutional issues? Or would the

majority of the Fathers have reacted to the early nineteenth century assertions of judicial supremacy as did President Jefferson when he protested that "to consider the judges as the ultimate arbiters of all constitutional questions . . . would place us under the despotism of an oligarchy?" It is sufficient here to recall that the Federalist doctrines of Chief Justice John Marshall had long since won the day and the Supreme Court had long since been accepted as the final interpreter of the American Constitution when the Australian Federal Conventions went to work upon a Commonwealth Constitution. The American Supreme Court, so accepted, was unquestionably the general model in the Conventions for the High Court of Australia.[1]

Though the debates and draft Constitution of 1897–8 were more explicit than those of 1891 regarding the Court, the members of both Conventions were very much in accord with Robert Garran's opinion of 1897:

> "There must be federal courts, charged with the duty of interpreting and enforcing the Constitution. . . . Every law that comes before them, whether of the Commonwealth or of a State, they will test by the Federal Constitution, and pronounce it valid or void according as it does or does not come within the scope of the powers allotted to the legislature which enacted it."[2]

Such an arrangement was, in the historical circumstances, probably inevitable, though champions of the British tradition of parliamentary sovereignty may have regretted it, and some, like Ben Tillett in 1898, actually complained that it "had been made by lawyers looking for fat fees." Sir Samuel Griffith, on the other hand, wanted to follow the American tradition even in insisting upon Senate confirmation of judicial appointments.[3]

Naturally each of the Fathers had his own estimates and hopes of the High Court and its powers of constitutional review. For the "States' Rights" men it was potentially a bulwark against Commonwealth usurpation and infiltration. To save expense, as he said—but also, it is to be suspected, to bolster States' rights—Sir Edward Braddon proposed (unsuccessfully) that the Chief Justices of the States, sitting together, should constitute the federal High Court.[4] Federalists like Deakin took a broader view of the approach of the future High Court judges:

> "They will feel that they are, by appointment and function, a truly Federal Court. They will give a Federal interpretation to all these provisions, unless the context clearly forbids their so doing."[5]

As far as the general electorates of 1897 were concerned, Chief Justice Sir Samuel Griffith was almost certainly correct in saying that:

> "I think it will be some time before the profession and the public fully realize the extent or the power of criticism and determination that is vested in this Court with respect to the decrees of the State and Federal Legislatures. Enormous and difficult questions will arise, and it is not to be expected that our decisions will meet with the views of all parties."[6]

From his knowledge of American constitutional history Griffith could fully appreciate John Marshall's remark that "the Judicial Department comes home in its effects to every man's fireside: it passes on his property, his reputation, his life, his all."

While the Constitution categorically provided for a High Court, and granted it the role of arbiter in constitutional issues (with very limited rights of appeal to the Privy Council, and those usually at the High Court's discretion), the actual establishment of the Court, including a great deal of detail regarding its jurisdictions and procedures, was left to Parliament. Two legislative provisions relating to the High Court are of special interest here. First, by an amending Act of 1907, Parliament removed constitutional issues from the State Supreme Courts, and hence eliminated the possibility of appealing such issues directly from the State courts to the Privy Council. In this way Parliament strengthened the position of the High Court, as the interpreter of the Constitution, which had been firmly established in 1903 by Section 30 of the first Judiciary Act whereby the High Court was given original jurisdiction in all matters arising under the Constitution or involving its interpretation. Secondly, Parliament gradually increased the places on the High Court from three in 1903 to seven in 1946.

The first Attorney-General, Alfred Deakin, provided in the Judiciary Act, 1903 (Section 88), for the Governor-General to obtain advisory opinions from the High Court regarding the constitutionality of Bills or Acts. Unlike the Canadian Supreme Court, the Australian High Court refused to give such opinions, as being outside its powers under the Constitution.[7] Mr. Justice Higgins, Sir Robert Garran and the New South Wales Bar Council all later gave evidence to the Royal Commission on the Constitution in favour of advisory opinions. P. D. Phillips argued before the Commission that:

> "It seems to be most unfair that a private person may have to bear the costs of litigation in order to decide upon the constitutionality of legislation, and that you may have to wait until the issue arises."[8]

As against such advocacy Owen Dixon, K.C. (soon to become a member of the Court) urged on the same Commission the view that, if there were provision for advisory opinions (1) abstract questions (as they would necessarily be) could be framed to mislead and get desired answers (2) the system would permit only of abstract answers which might in practice be defective and incomplete, and (3) the Court would not be bound by such opinions, anyway. The question of advisory opinions can fairly be reckoned dead. Again the American Supreme Court pattern had been copied.

Deakin, who, as Attorney-General, prepared the Judiciary Bill of 1903, had been a leading member of the Conventions.

He called on former colleagues of the Conventions for help in drafting the Bill's provisions for the High Court:

> "I am under a debt which cannot be over-estimated to the Chief Justice of Queensland, Sir Samuel Griffith . . . . for the unstinted generosity with which he has supplied original drafts, criticisms, and suggestions for the shaping of this measure. After it was put into form I thought it right to submit it to the chairman of the Judiciary Committee of the last Federal Convention, Senator Sir Josiah Symon, to whom also I am under a great obligation for criticism and suggestions. Finally I submitted it to the chairman of the Judiciary Committee of the Convention which was held in 1891, Mr. Justice Clark of Tasmania."[9]

Barton and O'Connor, members of the drafting committee of the Committee on Constitutional Machinery at the Adelaide Convention in 1897, and soon to join Griffith as original members of the High Court, were Cabinet colleagues of Deakin at this time. There was thus a useful continuity through the period of the Court's creation, definition, foundation and early working.

The selection and appointment of High Court judges rests, under the Constitution, with the Government of the day. Commonwealth and State Parliaments have, moreover, contributed from amongst their members a majority of the judges of the High Court to date. In later years, however, when parliamentary life appears to have attracted fewer constitutional lawyers of eminence, there has been an increase of judges without parliamentary and administrative experience:

Judge.	State.	Commonwealth.
Griffith, C.J.	M.L.A., Minister	—
Barton, J.	M.L.A., M.L.C., Minister	M.H.R., Prime Minister
O'Connor, J.	M.L.C., Minister	Senator, Minister
Isaacs, J. & C.J.	M.L.A., Minister	M.H.R., Minister
Higgins, J.	M.L.A.	M.H.R., Minister
Piddington, J.*	M.L.A.	—
Powers, J.	M.L.A.	—
Rich, J.	—	—
Gavan Duffy, J. & C.J.	—	(Unsuccessful Senate Candidate)
Knox, C.J.	M.L.A.	—
Starke, J.	—	—
Dixon, J.	—	—
Evatt, J.	M.L.A.	—
McTiernan, J.	M.L.A., Minister	M.H.R.
Latham, C.J.	—	M.H.R., Minister
Williams, J.	—	—
Webb, J.	State Civil Servant	—

* Appointed by Executive Council, but resigned before taking up duties.

II

The first five members of the High Court were notable for their practical experience of legislative and administrative work as well as for their part in founding the Commonwealth and drawing up its Constitution. This richness of their background is of special importance because, as R. G. Menzies has properly pointed out,

> "*there is no question that what we call constitutional law is only half law and half philosophy, political philosophy, and therefore it, more than any other branch of law, changes according to the philosophical current in the minds of the people from time to time.*"[10]

It is not simply that the political arena is a better sphere than the Bar for discovering "the philosophical current in the minds of the people," it is highly desirable that political and constitutional philosophies should have been tested and matured in practical contact with law-making and administration. This is not to argue that political experience is a prerequisite in a High Court judge or that, in selecting judges, Cabinet should not also "look for.... great technical skill, great learning, width of experience.... wisdom, character and balanced judgment."[11]

The three original members of the High Court, Sir Samuel Griffith, Sir Edmund Barton and Richard O'Connor, took a strictly, even a narrowly "federal" view of the Constitution, in the sense that "federal balance, even though the actual words might seem to give the Commonwealth comprehensive powers," was to be sustained.

Both as Constitution-makers and as lawyers they were greatly attracted by the nature, functions and precedents of the United States Supreme Court. As Griffith frankly explained their attitude:

> "The framers of the Australian Constitution had before them decided cases in which certain provisions of the United States Constitution had received definite and settled interpretation. With these cases before them they used in many of the sections of our Constitution almost identical language. Does not this raise a strong presumption that they intended the same interpretation to be placed upon similar words in our Constitution? . . . We are not, of course, bound by the decisions of the Supreme Court of the United States. But we all think that it would need some courage for any Judge at the present day to decline to accept the interpretation placed upon the United States Constitution by so great a judge [Marshall] so long ago as 1819 [McCulloch v. Maryland] and followed up to the present day by the succession of great jurists who have since adorned the Bench of the Supreme Court at Washington. So far, therefore, as the United States Constitution and the Constitution of the Commonwealth are similar, the construction put upon the former by the Supreme Court of the United States may well be regarded by us in construing the Constitution of the Commonwealth, not as an infallible guide, but as a most welcome aid and assistance."[12]

The approach of these three judges was influenced not simply by the fact that the Conventions had adopted some American precedents, but that they had, in the matter of distribution of powers, deliberately leaned to the United States rather than the Canadian form of federalism.[13] In interpreting the Australian Constitution these judges were insistent that it should be looked upon as a *contract* and hence that "regard must be had to the facts and circumstances existing at the date of the contract" as being "applicable in a special degree."[14] This view in itself appears to have reacted in a peculiar way on their own treatment of American precedents:

> "The decisions of the Supreme Court of the United States after the date of the Constitution have not the same quasi-authority in Australia as those which preceded it and of which the High Court has held that a knowledge may be imputed to the framers of the Constitution."[15]

From American precedents the original Court imported the concepts of "implied limitations" and "implied prohibitions" upon powers the unchecked exercise of which they felt might otherwise upset the federal equilibrium. In particular they developed an Australian application of the principle of immunity of Federal and State instrumentalities from each other's legislation and regulation. The inevitable effect of the application of these concepts to a Constitution where the powers of the National Parliament were already limited in number and specifically enumerated was to give a "States' Rights" colour to the philosophy reflected in the decisions of the original judges, though these first judges applied the concepts to State attempts to "interfere" with Commonwealth instrumentalities as well as in the reverse sense. Indeed, "remembering Marshall's work he [Griffith] was extremely anxious lest the newly established Commonwealth should be subjected to attack, especially from the strongly entrenched States."[16]

While Griffith, Barton and O'Connor frequently reminded themselves that "it would indeed be a lamentable thing if this Court should allow itself to be guided in the interpretation of the Constitution by its own notions of what it is expedient that the Constitution should contain or the Parliament should enact,"[17] they did, in effect, do just that. Though they explicitly reminded themselves that "with advancing civilization new developments, now unthought of, may arise,"[18] they were inclined to be preoccupied with the preservation of a mental picture of federalism which they, as *State* leaders at the Conventions, had built up in the period 1890-1900.[19] Though they recognized "the sound principle of construction that Acts of a sovereign legislature . . . . should, if possible, receive such an interpretation as will make them operative and not inoperative,"[20] they would sacrifice an Act or an administrative decision rather than modify their private mental vision of the

working federal Constitution, which they regarded, in Sir Robert Garran's phrase, "with a sort of religious reverence, as being, not only the best attainable, but the ideal."

The original members of the Court recognized the extent of the gap which might be found between decisions arrived at from their own historical-federal approach and those arrived at from an approach by way of the natural meaning of the words of the Constitution by itself. They were inclined to treat the latter approach with a heavy irony:

> "It is true that what has been called an 'astral intelligence', unprejudiced by any historical knowledge, and interpreting a Constitution merely by the aid of a dictionary might arrive at a very different conclusion as to its meaning from that which a person familiar with history would reach."[21]

But Isaacs and Higgins, who joined the Court in 1906, contended for something not unlike the approach here pilloried by the Chief Justice. In construing the Constitution they sought first to give the nation as a whole the benefit of all that the sections of the Constitution in their natural meaning could reasonably be held to allow to its Parliament. They felt that the original justices were putting the cart before the horse in construing "the special grant to the Commonwealth by the residuary powers of the States."[22]

Before he went to the Court, Higgins had declared his attitude to the Griffith approach:

> "I venture to think that the introduction of powers by implication, of prohibitions by implication, cannot legitimately be carried so far—at least under modern British law. Judges, in interpreting and applying the law, have no right to assume the functions of legislators. The justification for judges introducing words that have not been expressed must rest on logical necessity, not upon political expediency. The implications must be necessary, not conjectural or argumentative."[23]

Isaacs took his stand with Higgins and expressed their positive aim in terms like these (the words are actually from a much later judgment but represent his outlook from the first):

> "It is always a serious and responsible duty to declare invalid, regardless of consequences, what the national Parliament, representing the whole people of Australia, has considered necessary or desirable for the public welfare. . . . Nullification of enactments and confusion of public business are not lightly to be introduced. Unless, therefore, it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it must be allowed to stand as the true expression of the national will. Construction of an enactment is ascertaining the intention of legislature from the words it has used in the circumstances, on the occasion and in the collocation it has used them. There is always an initial presumption that Parliament did not intend to pass beyond constitutional bounds. If the language of a statute is not so intractable as to be incapable of being consistent with this presumption, the presumption should prevail."[24]

For years Isaacs and Higgins wrote forthright dissents[25] to a series of judgments in which the original members of the Court, or, after O'Connor's death in 1912, Griffith and Barton steadfastly sustained their federal philosophy. The dissenters were not without comfort and encouragement from the Privy Council. They continually focussed attention on the words of the Constitution themselves, as when Isaacs, dealing with an industrial case, insisted that the Court should:

> ". . . . consider the actual circumstances of the industrial relations of the parties concerned, unembarrassed by legal theories that find no place in the words conferring the power, that do not and cannot alter economic realities and have no power to satisfy the material requirements of the contesting parties, or to supply the public wants in case of interruption."[26]

Time, as it happened, was on the side of Isaacs and Higgins. By 1920 both Griffith and Barton had passed from the Bench. But it had, perhaps, become clear even earlier that the "philosophical current in the minds of the people" was running against the narrower interpretations. The Commonwealth was becoming closer knit. The First World War speeded the process and enormously increased the prestige and practical importance of the National Parliament. It was fitting that, when the crisis in the history of the Court came, when the "Griffith" doctrine went under, it was Isaacs who spoke for the Court. He dealt first with the doctrines of immunity of instrumentalities, implied prohibitions and implied limitations, then proceeded to establish the principles for which he and Higgins had contended so long:

> "The more these [earlier] decisions are examined and compared with each other and with the Constitution itself, the more evident it becomes that no clear principle can account for them. . . . Some are . . . . rested on implication drawn from what is called the principle of 'necessity', that being itself referable to no more definite standard than the personal opinion of the Judge who declares it. The attempt to deduce any consistent rule from them has not only failed, but has disclosed an increasing entanglement and uncertainty, and a conflict with the text of the Constitution and with distinct and clear declarations of law by the Privy Council. (141–2).
>
> ". . . . From its nature, it [the Griffith doctrine] is incapable of consistent application, because 'necessity' in the sense employed - a political sense—must vary in relation to various periods and circumstances. . . . *Possible abuse of powers is no reason in British law for limiting the natural force of the language creating them.* No Court has any right to narrow those limits by reason of any fear that the powers as actually circumscribed by the language naturally understood may be abused. . . . The ordinary meaning of the terms employed in one place may be restricted by terms used elsewhere: that is pure legal construction. But, once their true meaning is so ascertained, they cannot be further limited by the fear of abuse. . . . The extravagant use of the granted powers in the actual working of the Constitution is a matter to be guarded against by the constituencies and not by the Courts." (150–1).[27]

In the same judgment the Court once-for-all cast off the hold of United States Supreme Court precedents and laid down that the Constitution should, in general, be interpreted not as a contract but according to the principles of normal statutory interpretation, being allowed—

> "to speak with its own voice, clear of any qualifications which the people of Australia, or, at their request, the Imperial Parliament, have not thought it fit to express, and clear of any questions of expediency or political exigency which this Court is neither intended to consider nor equipped with the means of determining."[28]

The broad principles of interpretation and construction laid down in the Engineers' Case remain generally intact.[29] Section 109 of the Constitution naturally took on a new (but not unlimited) significance for the Commonwealth. If any final proof of the willingness of later High Courts to apply the principles of the Engineers' Case to the full is required, it is to be found in two judgments relating to financial provisions of the Constitution.

First there are the Garnishee Cases, where the Court ruled that the Commonwealth Parliament can lawfully enact a measure necessary for the enforcement of another law made in the exercise of a power conferred on it by the Constitution—and that where the enforcement involved the attachment of the tax revenue of a State.[30] Secondly, there is the Uniform Tax Case where the Court agreed that the Commonwealth had the power effectively to exclude the States from the field of direct taxation.[31] Chief Justice Latham squarely faced and frankly admitted the truth not only of the old maxim, "the power to tax is the power to destroy," but of the fact that, under the Constitution construed according to the accepted (i.e. Isaacs-Higgins) principles, this power inheres in the Commonwealth as against the States. He acknowledged that in consequence the Court is powerless to prevent Commonwealth exercise of that power to the limit, provided certain forms are observed. He points to the National Parliament and the Australian electorate as the only repositories of valid and sufficient authority to check any extreme use of the taxation power.[32] Griffith, Barton and O'Connor would almost certainly have found either of these decisions quite unacceptable by the principles and standards which it was their rule to apply.

It is contended by critics that the Engineers' Case decision was as "political" a decision as any made by Chief Justice Griffith himself. In the sense in which R. G. Menzies has described constitutional law as "only half law and half .... political philosophy" it could not be otherwise. Judicial reversal is serious at any time and this was a drastic reversal, tinged in the judgment itself with even what amounts to unfairness to Griffith.[33] Yet, as Isaacs and Higgins had long contended (and

as Higgins again showed devastatingly in 1925[34]), the Griffith decisions were leading the Court and the nation into deeper and deeper difficulties. In all probability a root and branch reversal would have had to come sooner or later; that it came sooner was the measure of the nation's good fortune and of the Court's close grasp of political realities. The extent of the reversal is very clearly expressed in K. H. Bailey's broad statement:

> "The general tendency of the current principle of interpretation is at any-rate clear; it is to enable the Commonwealth to exercise its powers throughout their whole range (except, of course, where it is otherwise expressly provided in the Constitution) as though it were a unitary government. Judicial interpretation has thus acted in Australia as one of those centripetal forces which are traceable in all modern federal constitutions."[35]

Writing in 1938, Mr. Justice Evatt held that "there is neither a tendency towards, nor yet away from, Commonwealth supremacy over the States. The Constitution itself stands."[36] Actually there are constructions and interpretations of the Constitution operative to-day which the Fathers would hardly recognize as related to their handiwork. The extent of this change is very largely due to the work of the High Court (a fact brought home all the more forcibly by the record of almost total failure to alter the wording of the Constitution by formal amendment). While, however, the Fathers would be surprised by much of the detail of current construction of their Constitution, few of them, surely, would be other than gratified by the spirit of progressive adaptation in which the later Court has met the challenge of national growth.

III

The Constitution permitted at the outset three possible ways of final appeal to the Privy Council in constitutional cases.[37]

The first was from and by express leave of the High Court in cases "as to the limits 'inter se' of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits 'inter se' of the constitutional powers of any two or more States."

The second was by appeal directly from the Supreme Courts of the States; the Constitution did, however, leave it open to the Commonwealth Parliament to close this second avenue.

The third possibility was by petition to the King for special leave to appeal from the High Court to His Majesty-in-Council—which petition the King could grant by virtue of his prerogative. Section 74 of the Constitution did add that, subject to the King's pleasure upon any such legislation, "the Parliament may make laws limiting the matters in which such leave may be asked."

This general position represents the compromise arrived at in and after the Conventions and before the final passage of the Constitution Act through the Imperial Parliament in 1900.

In fact there was considerable feeling in Australia, and on the original High Court itself, against appeals to the Privy Council on constitutional issues. Chief Justice Griffith in the first year of the Court emphasized that constitutional interpretation was peculiarly the High Court's task:

> "Grave responsibility is cast upon this Court by the Constitution. We know historically that this responsibility was only cast upon us after long consideration and negotiation. Various proposals were made, and the establishment of the Commonwealth very nearly fell through in consequence of the differences of opinion upon the point. The final solemn determination of the English Parliament, with the assent of Australia, was that responsibility should be cast upon the High Court."[38]

In the same case Mr. Justice O'Connor was particularly forthright on this point:

> "So strongly do I feel that that duty has been cast on myself as a member of this Court, that I have no hesitation in saying, if we found that by a current of authority in England it was likely that, should a case go to the Privy Council, some fundamental principle involved was likely to be decided in a manner contrary to the true intent of the Constitution as we believed it to be, it would be our duty not to allow the case to go to the Privy Council, and thus to save this Constitution from the risk of what we would consider a misrepresentation of its fundamental principles."[39]

When the case of Webb v. Outrim[40] was appealed directly from the Supreme Court of Victoria to the Privy Council, and the Judicial Committee of the Council gave a judgment contrary to the High Court's ideas, two things happened. First, Parliament passed an amendment to the Judiciary Act removing constitutional issues from the State Supreme Courts to the High Court (and hence the possibility of appeals from State Courts to the Privy Council, by-passing the High Court). Secondly, the High Court, under Griffith, in subsequent constitutional cases (notably Baxter's Case) disregarded and continued contrary to the Privy Council's decision in Webb. v. Outrim:

> "It appears to us," said Chief Justice Griffith, "that the High Court was intended to be set up as an Australian tribunal to decide questions of purely Australian domestic concern without appeal or review unless the High Court in the exercise of its own judicial functions, and upon its own judicial responsibility, forms the opinion that the question at issue is one on which it should submit itself to the guidance of the Privy Council. To treat a decision of the Privy Council as overruling its own decision on a question which it thinks ought not to be determined by the Privy Council would be an unworthy abandonment of the great trust reposed in it by the Constitution. It is said that such a

state of things as would follow from a difference of opinion between the Judicial Committee and the High Court would be intolerable. It would not, perhaps, have been extravagant to expect that the Judicial Committee would recognize the intention of the Imperial legislature to make the opinion of the High Court final in such matters. But that is their concern, not ours. We may point out, however, that the suggested inconvenience of divergence of decisions is always liable to happen if the Judicial Committee do not adopt this view. . . . For these reasons we are of opinion that this Court is in no way bound by the decisions of the Judicial Committee in Webb v. Outrim, but is bound to determine the present appeal upon its merits according to its own judgment. In other words, we think that this Court is in effect directed by the Constitution to disregard the unwritten conventional rule as to following decisions of the Judicial Committee in cases falling within Section 74."[41]

The Judicial Committee bowed to this vigorous opinion, at least to the extent of refusing leave of appeal in the case (Baxter's Case) which was the occasion of Griffith's challenge.

The key to the original High Court's attitude in this matter of Privy Council appeals would appear to lie in the words of O'Connor's judgment in Wollaston's Case, quoted above, and in these words from Griffith's judgment in Baxter's Case:

"No disrespect is implied in saying that the eminent lawyers who constituted the Judicial Committee were not regarded either as being familiar with the history or conditions of the remoter portions of the Empire, or as having any sympathetic understanding of the aspirations of the younger communities which had long enjoyed the privilege of self-government."[42]

In other words, three men who had toiled in the making of the Constitution, in winning its acceptance, and (two of whom had been concerned) in setting the Commonwealth in motion, saw no reason in the Constitution or its background why they should, and every reason why they should not, expose their federal philosophy to the will of an even higher judicial authority. They knew they could not expect members of the Judicial Committee of the Privy Council, with their training under a unitary system of government, to appreciate fully the subtleties and niceties of the doctrines of mutual non-interference, of implied limitations and implied prohibitions. After all, had not Haldane, later to join the Judicial Committee, said in the House of Commons debate on the Commonwealth Constitution Bill:

"On this occasion we establish a Constitution modelled on our own model, pregnant with the same spirit, and permeated with the principle of responsible government. Therefore, what you have here is nothing akin to the Constitution of the United States except in its most superficial features."[43]

When the time and circumstances came for Isaacs' and Higgins' philosophy to prevail they were, in contrast to Griffith

after Webb v. Outrim, happy to cite views and judgments of the Privy Council in their own support.[44] For all that, Isaacs and Higgins shared Griffith's jealous regard for the status and jurisdiction of their Court and dislike of Privy Council appeals other than in most exceptional instances. In this respect the post-Griffith High Courts received from the Commonwealth Government all the support which in 1907 the Griffith Court received from the Deakin Government after the Webb v. Outrim decision of the Privy Council.[45] As Attorney-General (afterwards Chief Justice) Latham expressed the views of one anti-Labour Commonwealth Government:

> "The opinion of the Commonwealth Government is that it is much wiser, both in the interests of Australia and of the Empire as a whole, that constitutional questions should be determined in Australia. We do not think that, in regard to constitutional matters, the Privy Council has anything like the same qualifications to act as it has in regard to law generally. . . . The Commonwealth is of opinion that it would be a mistake to amend Section 74 of the Constitution in the direction of granting further rights of appeal. We should be rather inclined to say that no appeal on such matters could lie outside Australia."[46]

This was an answer to latter-day "States' Rights" men, like the then conservative Attorney-General of Tasmania, H. S. Baker, who argued that by 1934 the High Court was losing the confidence of the Australian people because on occasion it (1) reversed itself, (2) was liable to appointments of its judges from the ranks of good party politicians (the Labour men Evatt and McTiernan were recent appointees), and (3) in fact had held the Commonwealth Parliament to be possessed of far wider powers than the Fathers of the Constitution ever intended or approved.

The holders of such views at least had the satisfaction of seeing the Privy Council grant special leave to appeal in a Section 92 case and then restore a tenet of the Griffith Court (in which Isaacs and Higgins acquiesced prior to 1920), namely, that the Commonwealth as well as the States was bound by that Section.[47] The Privy Council thus reversed a view which had prevailed in the High Court in favour of the Commonwealth since 1920.[48]

IV

Any Court faced with the necessity of determining constitutional issues suffused with politico-economic conflicts is placed in an unenviable position. In the present age of positive government, in particular, there is likely to be a constant pressure upon the Court to stand between the majority-backed government of the day and its objectives—"most of the historical controversies over State versus Federal powers have been concerned, not so

much with locating the appropriate exercise of power, but with preventing its exercise."[49]

> "Spokesmen for the enterprise seeking to avoid regulation seek shelter from the would-be regulator by crouching within the confines of that government which at the moment is not trying to regulate at all, or by lodgment in a mythical no-man's land between the spheres of the two governments."[50]

The invalidating of the whole or part of such laws as the Tariff Excise ("New Protection") Act and the Trade Marks ("Union Label") Act, may be entirely correct technically, as may be the views of Griffith and Barton on the limits of the Commonwealth's powers of economic investigation. But when such decisions follow close upon each other it is not surprising that to the rank and file of Labour the High Court should appear a bulwark of Capital. At that time Andrew Fisher, three times Prime Minister, protested that "they are a conservative body and have always conserved the rights and interests of those in possession, rather than initiated or opened up new interests."[51] A minority member of the then Court (Higgins), criticizing the shortcomings of the distribution of powers as construed by the majority of the Court, asked:

> "Why should the Commonwealth Parliament be able to levy taxation with a view to the benefit of the manufacturers, and not be able to levy taxation with a view to the benefit of their employees? .... It has to be steadily borne in mind that the Federal Parliament has power to discriminate between persons, though it has not the power to discriminate between States and parts of States."[52]

Even a conservative who was generally well satisfied with the Griffith Court, Sir Edward Mitchell, K.C., felt bound to admit that, while "no one had greater admiration than I have for the late Sir Samuel Griffith .... he laid down the law very strongly at times."[53]

Griffith, Barton and O'Connor stoutly maintained that "our duty is to declare the law as we find it, not make new law."[54] But in construing a Federal Constitution the Courts cannot help but "make law" as far as both Government and citizens are concerned—

> "The power of interpretation exercisable by the High Court, whether in its original or appellate jurisdiction, and as exercised by the Court can have and has had far-reaching effects in relation to the determination of the applicability, effect and operation of the various provisions of the Constitution and of various Federal Acts of Parliament, and many of the decisions of the Courts have led to the most surprising and unexpected results."[55]

In effect the judges are often "rewriting" the Constitution, giving it here or there a new tuck, twist or slant. They are even prepared occasionally, as they did so dramatically in the Engineers' Case, to reverse themselves, or at least to repudiate

the views of their predecessors on the bench. For this course, which throws the formerly satisfied interests into consternation and brings new hope to the once dejected and critical, the High Court can find sufficient precedents, whether in America or Britain. Isaacs, for the post-Griffith Court in the Engineers' Case, found justification enough for reversals in the Privy Council's conviction that "whilst fully sensible of the weight to be attached to such [earlier] decisions, their Lordships are at the same time bound to examine the reasons upon which the decisions rest and to give effect to their own view of the law."[56]

It would appear that the High Court is, in effect, simultaneously "legislating" at two levels in constitutional cases—not wilfully but because the task is laid upon it. First, it is "legislating" new "slants" or new detail into the Constitution. Secondly, in declaring the "Union Label" section of the Trade Marks Act or the "New Protection" features of the Excise Tariff Act or the nationalization provisions of the Airlines Act "ultra vires" and hence void, the Court is virtually giving legislative force to measures substantially different from those to which the will of Parliament thought to give existence. Frequently the Court is thus "legislating" by narrow margins of three to two, slender majorities within which the judges do not always arrive at the same result by similar reasoning. In those circumstances a change of one in the personnel of the Court may reverse a decision and revolutionize the Court's approach, while a renewed mandate at a general election (as distinct from the carrying of a constitutional amendment at referendum) is powerless to do so.

It is true that the judges would deny that they "legislate." They take their denial to greater lengths:

> "Common expressions such as: 'The Courts have declared a statute invalid'," says Chief Justice Latham, "sometimes lead to misunderstanding. A pretended law made in excess of power is not and never has been a law at all. Anybody in the country is entitled to disregard it. Naturally, he will feel safer if he has a decision of a court in his favour, but such a decision is not an element which produces invalidity in any law. The law is not valid until a court pronounces against it—and thereafter invalid. If it is beyond power it is invalid *ab initio*."[57]

Such reasoning (formally impeccable as it may be) has no significance for the man in the street who lacks the knowledge, advice or money to initiate and fight a case in the High Court, and possibly to the Privy Council. To him the explanation of the Chief Justice is about as meaningful as the idealists' distinction between his "real will" and his "phenomenal will," if less mischievous in its implications.

Most notorious of the provisions of the Constitution which have increased the burden of the Court and increased the scope and necessity for "judicial legislation" is Section 51 (xxxv).

There a great and growing field is laid down for certain federal instrumentalities (arbitration court and related conciliation machinery) in a sphere where the Commonwealth Parliament itself is practically without any direct powers at all. The Arbitration Act, by which these instrumentalities are set up, has wrecked four Ministries and has given the High Court in all probability "more work than all the other laws of the Commonwealth together." It is, moreover, a field in which the social and political philosophies of individual High Court judges have time and again been brought into play.[58] Well might Justices Isaacs and Rich feel that, in this field,

> "The process of adjustment is progressive and unending. It is impossible to delineate or define the term 'industrial dispute' by adherence to the particular forms it had displayed up to 1900."[59]

Upon which Mr. Justice Rich expanded in very frank terms later:

> "The enlargement by judicial decision has been progressive, and has been accomplished by the double process of the Court of Conciliation and Arbitration making, whether by experiment or otherwise, awards the validity of which was uncertain or disputable, and this Court resolving the doubt in favour of that Court's decision."[60]

Only the liquidation of federalism or the transfer of broad powers over production and distribution to the National Parliament would "remove the possibility of determination by the Court of matters which are likely to become storm centres of social interest."[61] For industrial, marketing and taxation matters have proved the stuff of constitutional litigation under federalism. Short of complete unification the Court will have no rest from constitutional issues charged with social interest—

> "Courts, in such a [federal] system, become battlegrounds for clashing social forces. . . . The able judge in a federal system, therefore, feels impelled to give thought to the social effects of his work. This awareness of social consequences in turn makes it impossible for him, in his own conscience at least, if not in his official capacity, to escape responsibility for those consequences."[62]

Judges frequently come to the High Court from politics. In decisions in which, as R. G. Menzies says, much political philosophy is to be found, it is not surprising that disappointed litigants, interests and political parties should look for connections between the past political and present constitutional convictions of the judges. The man in the street is perhaps the more ready to jump or be persuaded to the conclusion that there is some such connection because he is baffled by the legal technicalities inevitably involved in many complex constitutional decisions—and Mr. Justice Dixon, for instance, admits that a comparatively "legalistic" approach is customary in consideration of constitutional issues before and by the Australian High Court.[63]

There is in Australia, moreover, a recurrent complaint that some of the judges are getting "too old" (at best a relative term)—and as the American, Mr. Justice Holmes, admitted somewhat regretfully "judges commonly are elderly men, and are more likely to hate at sight any analysis to which they are not accustomed, and which disturbs repose of mind, than to fall in love with novelties."[64]

At all events it is the conservative interests which stand in defence of the Court as an especially valuable check upon "abuse of power" by the parliamentary majority. It is from them and from the conservative elements of the legal fraternity that the protests come when, as in the Engineers' Case, the Court concedes ground to the popularly elected National Parliament. Thence also came the protests over the appointments of Piddington and Powers, and again over the appointments of Evatt and McTiernan—Labour nominees to the Court.

But should such a check exist upon the parliamentary majority? Should the Fathers of the Constitution, who were the ordinary politicians of another day, thinking in terms of a situation fundamentally different from ours to-day, reach beyond the grave and through the agency of High Court judges constrain the will of the nation's living majority? Or should

> ". . . . the wishes of the people, as expressed through the medium of their elected representatives in this Parliament . . . . be supreme. As long as the High Court remains an ultra-legislative body, no Government, no matter how well intentioned, can fully implement its policy"[65]

If the majority in a free democracy has reached a stage where it can no longer be trusted to maintain essential and fundamental liberties and rights, can a minority, whether obligarchy, "benevolent" dictator, or Court bench, be expected to do so? It may or it may not, but no process of reasoning can conclusively show that it would.

Who but the majority in a free democracy should determine and delimit social and economic policy. The majority may on occasion err, but provided free democratic processes are operating the majority—or a *new* majority—will right the errors. "Part of the faith in the democratic process is that errors may be corrected by more of the same process, only better."

> "Where all the effective means of inducing political changes are left free from interference, education in the abandonment of foolish legislation is itself a training in liberty. To fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies, rather than to transfer such a contest to the judicial arena, serves to vindicate the self-confidence of a free people."[66]

A minority or a dictatorship or a Court, secure in their power, need not respond in the same way or to the same degree in the same short period. As Mr. Justice (later Chief Justice) Stone

said of the United States Supreme Court to which he belonged—"the only check on our exercise of power is our own sense of self-restraint."[67]

While federation remains, or at least while major powers over the economy continue to be withheld from the National Parliament, it is both fruitless and unfair for the advocate of parliamentary sovereignty on the British model to complain about the High Court (particularly unfair in view of the Court's record since 1920). The Court simply does the job thrust upon it by the fact and conditions of federation and for more than half its history it has generally taken a broad, national view of the Constitution which it construes.

Least of all should he allow any sense of frustration on the Court's account to grow upon him. Frustration is what turns a healthy faith or a tempered scepticism about men and institutions into the festering cynicism which is Australian democracy's worst enemy.

No matter what the past record of rebuffs to constitutional amendment proposals at many referenda, further attempts by referenda appear to be the only chance of advance towards parliamentary sovereignty consistent with a faith in constitutionalism. In referenda the balance is tipped against the advocate of national parliamentary sovereignty inasmuch as the forces of popular inertia and propertied conservatism are against him and the media of persuasion are, on the whole, heavily in opposition. These are reinforced by the more or less irrational provincialism to which most men are prone and upon which shrewd men can play for their own purposes.

There are, to-day, on the other hand, compensating factors which may make success easier of attainment in the future. The trend in the actual balance of power between Commonwealth and States is clearly towards the former. Bread-and-butter issues vitally interesting the voter increasingly fall within the scope of the Commonwealth Parliament—in that connection the success of the social services powers referendum of 1946 is significant. Moreover, the regular national broadcasting of the Commonwealth Parliament's proceedings inaugurated in 1946, has the effect of focussing popular attention on that legislature to the exclusion of those of the States. And in any case the drama in parliamentary politics is now overwhelmingly centred in Canberra. It will be extraordinary indeed if these factors do not, in the coming years, do much to offset the initial advantages with which opponents of wider powers for the Commonwealth Parliament contested past referenda.

No attempt has been made to consider the whole range of arguments for and against Australian federalism, which have been canvassed over and over again in past years. Only the

effects of federalism on national parliamentary politics and on the Commonwealth Parliament itself have here been discussed. In the several chapters it has been contended that, in many major and minor particulars those effects have been unfortunate for Australian parliamentary government.

If that contention is accepted, one further question remains: what should be the strategy of amendment? Should there be continued piecemeal attempts to widen and increase the Commonwealth Parliament's powers as at present set out in Section 51? Or should a constructive proposal for Commonwealth legislative supremacy, linked with devolution through existing State or smaller regional units, be developed and put to the people? The relative merits of the alternative approaches are matters for political judgment, upon which champions of full sovereignty for the National Parliament may well be deeply divided. They are considerations upon which, in the final analysis, the Government of the day must make up its mind and take its stand; before it does so it will carefully review the immediate mood and circumstances of the general electorate which must make the final choice.

APPENDIX A

FOOTNOTES

CHAPTER I

1. It is no part of the plan of this work to relate the history of the federal movement in detail. No one standard work on the subject yet exists, but the reader is referred to Allin, Quick and Garran (Introduction), the Cambridge History of the British empire, and Deakin's *The Federal Story*.

2. Quick and Garran: Introduction, p. 225.

3. Royal Commission on the Constitution, 1927: Evidence, p. 878: L. P. Broinowski on the intensity of the campaigning for the Bill in 1898–9.

4. Allin: Early Federation Movement, p. vi.

5. Senate Select Committee on Standing Committee Systems, 1929: Evidence, p. 37; Sir Robert Garran.

6. Playford was from South Australia, cf. also Barton: New South Wales Legislative Assembly Debates, November 23, 1892, where he says exactly what Playford had said.

7. New South Wales Legislative Assembly Debates, May 14, 1890: p. 423. On another occasion Want was more positive in his opposition: "I would rather see almost anything than see the hydra-headed monster called Federation basking in its constitutional beastliness in this bright and sunny land."

8. cf. Alfred Deakin: *The Federal Story* (Melbourne, 1944): chap. III.

9. South Australian Legislative Assembly Debates, June 26, 1890.

10. Cited: Quick and Garran, pp. 83–4.

11. Royal Commission on the Constitution, 1927: Evidence, p. 66: Sir Robert Garran says that George Reid made the Constitution more difficult just because, from interstate jealousy, he thought that Victoria had its eyes greedily fixed upon the Riverina. Hence Section 123 and the last paragraph of Section 128.

12. The "West Australian", July 30, 1899: Editorial.

13. Melbourne Inter-colonial Conference Proceedings, 1890: Sir Henry Parkes.

14. South Australian Legislative Assembly Debates, June 26, 1890: Cockburn.

15. Cockburn: *Ibid.*

16. Cockburn: Australian Federation, p. 171 (from a speech at the 1897 Convention delegation election).

17. Sir Charles Dilke: Forum, 1891: pp. 381–3.

18. In cases where a delegate was notably associated with two lines of activity he is counted under both heads. Those classified under "politician" are those whose records indicate that they had probably "lived on the game" for a long time. Such tables can be at best only an approximate picture.

19. Sir Harrison Moore: *The Commonwealth of Australia*, 2nd Edition, p. 63. The two percentages are those of the colonies with the lowest and highest percentage polls of enrolled electors.

20. cf. Sir Harrison Moore: *The Commonwealth of Australia*, 2nd Edition, p. 619; and his article in the Australian Quarterly, June, 1931: p. 18.

21. Senate Select Committee on Standing Committee Systems, 1929: Evidence, p. 37: Sir Robert Garran.

22. Royal Commission on the Constitution, 1927: Evidence, p. 209: Richard Windeyer, K.C.

23. Cardinal Moran, July 17, 1884: cited in Black: *History of the New South Wales Labour Party*, No. 4, p. 24.

24. Bruce Smith, 1897: cited in Black: No. 4, p. 24.

25. Richard Baker, Adelaide "Advertiser", Jan. 29, 1892.

26. J. T. Walker was a director of the Bank of New South Wales and of the Australian Mutual Provident Society.

27. M. Savage: *A High Adventure*, Australian Quarterly, December 1941: p. 72.

28. Royal Commission on the Constitution, 1927: Evidence, p. 413: Sir Arthur Robinson

29. Grenfell Record, May 14, 1898: cited by Evatt, Australian Labour Leader: p. 101.

30. Sir Samuel Griffith was later first Chief Justice of Australia and his lack of sympathy with phases of the popular cause in the Federal Movement was, perhaps, reflected in some of his later Court judgments, for example, in the "Union Label" case.

31. "Liberal" as a party name has been appropriated by parties with widely differing programmes and emphases.

32. Notice that these were all, as it happened, professional men; none of them was merchant, financier or squatter.

33. There was one Labour man—Trenwith—at the 1897–8 Convention.

34. cf. Convention Debates, 1891: p. 201. Cockburn jestingly refers to a colleague as "my honourable friend the evolutionist."

35. Cited: *Henry Bournes Higgins* by Nettie Palmer, p. 152.

36. Cited: *Henry Bournes Higgins* by Nettie Palmer, p. 134.

37. See the quotation from Deakin at the chapter-head.

38. Convention Debates, 1891: pp. 198–9. Actually the wording given here is the slightly revised version of his book *Australian Federation*, pp. 139–140.

39. New South Wales Legislative Assembly Debates, May 27, 1897: A. B. Piddington.

40. *Ibid.*

41. Section 116 is an exception; it provides for full religious freedom and against the establishment of any creed or church.

42. C. C. Kingston: Pamphlet reprint of article in "Review of Reviews", Adelaide, February, 1896.

43. New South Wales Legislative Assembly Debates, May 27, 1897.

44. South Australian Legislative Assembly Debates, June 26, 1890.

45. Cited in his *Australian Federation*: pp. 163–4.

46. Convention Debates (Sydney Session), 1897–8: p. 284. He was speaking on the limitation of Senate powers and equal representation for the States in the Senate.

47. Convention Debates (Melbourne), 1898: Vol. I, p. 284: Deakin. (The difficulty of amending the constitution, even under the final form of Section 128, was a well canvassed issue in the 1898 ratification campaign).
48. Convention Debates (Adelaide), 1897: p. 782: Higgins.
49. Convention Debates (Melbourne), 1898, p. 194: Trenwith.
50. Convention Debates (Melbourne), 1898: p. 210: Forrest.
51. Convention Debates (Melbourne), 1898: pp. 208–9: Reid.
52. Royal Commission on the Constitution (1927): Evidence of J. J. Kenneally for the Australian Labour Party.
53. House of Representatives Debate, June 28, 1901.
54. Royal Commission on the Constitution (1927): Evidence of Professor Shann.
55. Convention Debates (Adelaide), 1897: p. 782.
56. Garran: Making and Working of the Constitution, Australian Quarterly, September, 1932: p. 12.
57. Commonwealth Parliamentary Papers, 1912: Vol. III, p. 379, ff.
58. Black: History of the New South Wales Labour Party: No. 1, p. 40.
59. Cited by T. R. Roydhouse and H. J. Tapercll: The Labour Party in New South Wales, 1892: p. 58.
60. H. Valentine Haynes: *Federation, or a Machiavellian Solution of the Australian Labour Problem*, Sydney. 1891.
61. South Australian Legislative Assembly Debates, 1897: p. 523: McPherson.
62. South Australian Legislative Assembly Debates, 1897: p. 938: W. O. Archibald.
63. New South Wales Legislative Assembly Debates: Vol. 81, p. 2428, ff: Hughes.
64. Black: History of the New South Wales Labour Party: No. 3, p. 22.
65. *Ibid.*, p. 21.
66. Hughes and W. T. Dick: "Federation as Proposed by the Adelaide Convention", Sydney, 1897.
67. South Australian Legislative Assembly Debates, 1899: p. 236: T. Price.
68. Royal Commission on the Constitution, 1927: Evidence, p. 734: F. W. Eggleston.
69. Harrison Moore: *The Commonwealth of Australia*. 2nd Edition: p. 221.
70. See, for example, Deakin's arguments in the 1891 Victorian Legislative Assembly Debates on the 1891 Bill.
71. Convention Debates (Adelaide), 1897: p. 987. There were, at that time, at least, some grounds for this sweeping assertion.
72. Memorandum of the Australian Colonial Delegation to the Colonial Secretary, April 27, 1900 (House of Commons Papers, May, 1900): cited by Quick and Garran, p. 240.
73. Cited in his *Australian Federation*: pp. 155 and 157.
74. cf. Hunt: American Precedents in Australian Federation: pp. 168–170.
75. For example, See Queensland Parliamentary Debates, 1890: vol. LXI, p. 195. So were representatives of other small States, e.g. Baker and Hackett, cf. Deakin, The Federal Story: p. 36.
76. Royal Commission on the Constitution, 1927: Evidence, p. 174: Piddington.

77. House of Representatives Debates, October 19, 1910: Irvine.

78. Quick and Garran, Introduction: p. 147.

79. Convention Debates (Sydney Session), 1897: pp. 507–8: Braddon.

80. Cambridge History of the British Empire: vol. VII, pt. i, p. 448: Sir Robert Garran.

81. H. L. Hall: Victoria's Part in the Australian Federation Movement 1849–1900: p. 118. Deakin: *The Federal Story*, p. 35.

82. From speeches at the 1897 Convention (Sydney Session) cited in his *Australian Federation* at pp. 212–3, 223. (At 1891 Convention Cockburn had acknowledged party lines in the Senate as possible, see p. 592, Debates).

83. From Cockburn's speech at the 1897 Convention (Sydney Session) cited in his *Australian Federation* at pp. 208–9. See also on the latter page his unrealistic view of the relation of popular referenda to the Senate's power.

84. Convention Debates (Adelaide), 1897: p. 510: Deakin.

85. cf. B. R. Wise: The Making of the Commonwealth, p. 248.

86. Convention Debates, 1891: p. 197: Cockburn.

87. Cited in "Australian Federation" p. 182, from Convention Debates (Adelaide), 1897.

88. Professor J. A. Smith: The Spirit of American Government, pp. 159–160.

89. Sir Isaac Isaacs: *Australian Democracy*, p. 34.

90. *Royal Commission on the Constitution*, 1927: *Evidence*, p. 1,341: Carruthers.

91. Royal Commission on the Constitution, 1927: Evidence, p. 230: Watson.

92. Sir Henry Parkes: *Fifty Years*, vol. II, pp. 338 ff.

93. Letter to Patterson, Premier of Victoria, June 12, 1894: cf. Victoria or New South Wales Parliamentary Papers.

94. cf. "A Suggested Constitution for the Commonwealth". "Bulletin", January 2, 1897.

95. In 1895 there was published in Sydney an anonymous pamphlet against the portly George Reid called *Reid the Wriggler, or the False Prophet of Free Trade.*

96. Letter to Patterson, June 12, 1894.

97. South Australian Legislative Assembly Debates, 1899: p. 236: T. Price.

98. cf. Deakin's views in the 1890 Melbourne Conference Debates, pp. 250 ff. Gillies, the Victorian Premier, appears to have followed Deakin's lead—and his 1891 change of view.

99 Royal Commission on the Constitution, 1927: Evidence, p. 174: Piddington.

100. Royal Commission on the Constitution, 1927: Evidence, p. 1,084: Symon.

101. *Ibid.*, p. 790: Dixon.

102. *Ibid.*, p. 1,337: A. C. Gibson for the Australasian Council of Trade Unions.

103. Convention Debates, 1891: p. 198: Cockburn; Notice that in the United States, shortly before this time (i.e. in 1884) the future President, Woodrow Wilson, was of opinion that "the only hope of wrecking the present clumsy misrule of Congress lies in the establishment of a responsible

cabinet government'' (cited American Political Science Review, February, 1939, p. 7).

104. Sir Harrison Moore: *The Commonwealth of Australia*, 2nd Edition, p. 610.

105. Convention Debates (Adelaide), 1897: p. 97: Higgins.

106. Convention Debates (Adelaide), 1897: p. 508: Deakin.

107. Convention Debates (Melbourne), 1898: p. 2,500: Deakin.

108. Convention Debates (Adelaide), 1897: p. 511: Deakin.

109. A. B. Piddington: *Popular Government and Federation* (Speech made on January 11, 1898), Sydney, 1898: pp. 14–15. See also his speech in the New South Wales House of Assembly, May 27, 1897.

110. Sir Harrison Moore: *The Commonwealth of Australia*, 2nd Edition, p. 168.

111. C. J. Friedrich: *Constitutional Government and Politics*, cited by E. Mims: *The Majority of the People*, p. 42.

112. Rt. Hon. Stanley Baldwin: 261 House of Commons Debates, p. 531.

113. Sir Richard Baker to the 1891 Convention, cited by D. L. McNamara: *The Constitution of the Commonwealth, An Historic Review*, 1940.

114. Charles and Mary Beard: *The American Leviathan*.

115. Alfred Deakin: Letter to the London ''Morning Post,'' April 1, 1902.

CHAPTER II.

1. United States Attorney-General (now Justice) R. H. Jackson: *The Struggle for Judicial Supremacy*, New York, p. 316.

2. Edwin Mims Jnr.: *The Majority of the People*, New York, 1941, p. 33.

3. This means a right to a livelihood—not necessarily an inalienable property right in a particular business if public policy dictates its closure or its being taken over by the Government.

4. cf. J. S. Mill: *On Liberty*, chap. I: ''Whenever there is an ascendant class, a large portion of the morality of the country emanates from its class interests and its feelings of class superiority.'' Probably a larger proportion of the population aspires to than belongs to the ''middle class'' in Australia. The following figures from the 1933 Census (though 1933 was a depressed year) illustrate this point. The population then stood at 6,629,000.

Breadwinners.	Total Number.	Admitted Income over £260.
Employers	207,680	77,391
Working on Own Account	369,375	37,181
Wage or Salary Earner	1,447,507	189,528
Employed Part Time	170,997	679
Unemployed	481,018	1,277
Others	479,018	25,731
Total	3,155,621	331,789

Equally important for a survey of the general electorate are the following three facts:

(a) Religious affiliations:

	1933. Millions.	1921. Millions.
Church of England	2·6	2·4
Roman Catholic	1·2	1·1
Methodist	0·7	0·6
Presbyterian	0·7	0·6
Claimed no religion at all	0·8	0·1

(b) Two thirds of the population of the Commonwealth lived in two States whose area was only 13 per cent. of the area of the Commonwealth.

(c) The homogeneity of the nation is evidenced by the fact that in 1933 5·8 millions were born in Australia, 0·7 million in the British Isles, and only 0·13 million elsewhere.

5. Deakin: Notebook, 1892, cited, Murdoch: *Alfred Deakin*, p. 174.

6. H. L. Mencken: *Notes on Democracy*.

7. Rt. Hon. John Curtin: "Labour's Economic Policy—War and Post-War", "Rydge's", December, 1941.

8. J. A. Merlo: in *Educational Studies and Investigations* (ed. Professor Browne), M.U.P., 1940: p. 77.

9. H. B. Higgins: Talk to Melbourne University students, cited N. Palmer: *Henry Bournes Higgins*, pp. 237–8.

10. E. T. Brown: *Bread and Power*, pp. 205–6.

11. Thus George Reid referred proudly to "the doctrine of 'White Australia', a term I invented" (though the "honour" is also claimed for Sir Samuel Griffith).

12. J. A. Farley: Behind the Ballots, New York, p. 162.

13. Sir H. Moore: Australian Quarterly, June, 1931: p. 17.

14. Rex v. Brisbane Licensing Court: 28 CLR. 23.

15. Royal Commission on the Constitution: Report, 1929: Minority Recommendation, p. 246.

16. Royal Commission on the Constitution: Evidence, p. 214: R. Windeyer.

17. Herbert Agar: in *Freedom of the Press To-day* (Ed. Ickes). pp. 21–22.

18. cf. H. L. Ickes, *Freedom of the Press To-day*, New York, p. 9: "Long ago the press discovered that the public lacked confidence in its editorials. So began the era of "loaded" news columns. This technique has many facets, the most common being that of giving an overwhelming preponderance of "news" space to the cause favoured by the publisher. There are also such tricks of the trade as type of display, placement, editorializing, discriminatory headlines and so forth."

19. In America an enterprising and socially-minded company has been publishing "Congressional Digest, the Pro and Con Monthly". In Britain the work of the Hansard Society is of even greater importance.

20. For "Sydney Morning Herald" spleen read the leader of October 4, 1941, on the morrow of John Curtin's assumption of office. Contrast the fair-minded, generous comment on Labour by the "Advertiser" in the days when it had competition (e.g. articles of June 8, 1910 or June 1, 1909) with its comments on Labour—and in particular on Dr. H. V. Evatt—in

September, 1940, when its monopoly position placed no premium on intellectual fairness.

21. Ambrose Pratt: *David Syme*, p. 232.

22. George Cockerill: *Scribblers and Statesmen*, p. 169.

23. Holmes, J.: Dissenting Judgment: Abrams v. United States 250, United States (1919): p. 623–4.

24. Sir Isaac Isaacs: *Australian Democracy and our Constitutional System*, p. 23. He is using "constitutional" here in the political rather than the strict legal sense.

25. A protest was made in the Commonwealth Parliament, December 9, 1940.

26. R. J. Boyer, President of the United Graziers' Association of Queensland: "Sydney Morning Herald", October 24, 1941. This admission is the more noteworthy coming from an office-holder of such a pressure group.

27. Henry Wallace: *New Frontiers*, New York, p. 62.

28. The Commonwealth Parliament sat in the building of the Victorian State Parliament until 1927.

29. Cited in Turner's: *The First Decade of the Commonwealth*, p. 172.

30. "Mufti" (Official organ of the Victorian State Branch of the Returned Soldiers' League): editorial of March, 1942.

31. T. V. Smith: *The Promise of American Politics* (Chicago, 1936), p. 248.

32. Jennings: *Parliament*, pp. 497–8.

33. H. J. Laski: "New Republic", New York, January 18, 1939.

34. Royal Commission on the Constitution, 1927–9: Evidence, pp. 411–412: Sir A. Robinson.

35. Royal Commission on the Constitution, 1927–9: Evidence, p. 210: R. Windeyer, K. C.

36. cf. Warren Denning: *Capital City*, for an account of Canberra's relationship to national politics.

37. The Commonwealth Electoral Act (1918–46) provides "no electoral expense shall be incurred or authorized by a candidate" in excess of these figures. Also that "any person incurring or authorizing any electoral expense on behalf of a candidate without the written authority of the candidate shall be guilty of a contravention of this Act." But gifts and services cannot be policed.

38. The relevant provisions of the Constitution are Sections 7–10, 29 and 30 in particular, Parts II and III in general.

39. The Commonwealth Electoral Act 1918–34 superseded the original Act.

40. Senate Elections Act, 1903.

41. The 1907 Amendment of Section 13 of the Constitution was designed to make this easier.

42. The London "Economist", February 5, 1944.

43. Anyone who wishes to do so should read *Democracy or Anarchy? A Study of Proportional Representation*, by F. A. Hermens (Notre Dame, Indiana, United States of America), or Ernest Barker's *Reflections on Government*; and, on the favourable side, the considerable English output of the Proportional Representation League.

44. Sir Frederick Eggleston: *The Search for a Social Philosophy*, p. 176.

45. Australian Correspondent: "Round Table", September, 1922, p. 891.

46. Report of Federal Executive to the 11th Commonwealth Conference of the Australian Labour Party, 1927: Official Report of the 11th Conference, p. 31.

47. Report of the Federal Parliamentary Labour Party to the 11th Commonwealth Conference of the Australian Labour Party, 1927: Official Report of the 11th Conference, p. 36.

CHAPTER III

1. H. E. Boote: "Australian Worker", Sydney, June 10, 1942.
2. The "Westralian Worker", Perth, April 23, 1943.
3. Hancock: *Australia*, pp. 201–202.
4. E. H. Lane: *Dawn to Dusk*, p. 289.
5. Andrew Fisher: Article in "The Worker" cited by Lloyd Ross, Australian Quarterly, December, 1934, p. 53.
6. W. G. Spence: *Australia's Awakening*, p. 598.
7. W. A. Holman: *Socialism* (the Reid-Holman Debate), pp. 9–10: Cited Evatt, *Australian Labour Leader*, p. 186.
8. The resolution moved by H. B. Higgins on June 28, 1901, was couched in cautious terms. "That in the opinion of this House it is expedient for the Parliament of the Commonwealth to accept (*if the State Parliaments see fit to grant it under Section 51 Paragraph 37 of the Constitution Act*) full power to make laws for Australia as to wages, hours and conditions of labour." (My italics).
9. Report of the seventh Commonwealth Conference of the Australian Labour Party (Melbourne, 1918), pp. 16–21.
10. The Conference-by-Conference steps towards the unification plank are set out in D. L. McNamara: *The Constitution of the Commonwealth, An Historic Review.*
11. Parliamentary Debates: House of Representatives, April 22, 1920, W. P. Mahony.
12. Official Report: Eleventh Commonwealth Conference of the Australian Labour Party (May 11, 1927), p. 37.
13. O. D. Ziemen: *The Constitution for a Continent*, p. 41.
14. Lenin: "Pravda", July 26, 1913.
15. Thus "Common Cause", the official organ of the Miners' Federation of Australia, in an article "Remove the Gag from the Communists", July 4, 1942, wrote quite frankly of "the Communists of the British Commonwealth of Nations whose leaders in Russia strived so long. . . ."
16. See Sydney "Sunday Telegraph", August 24, 1941.
17. Speech to past pupils of Christian Brothers' College at North Melbourne Town Hall, July, 1913.
18. See Chapter I.
19. Fr. J. Freeman: Sermon at St. Mary's Cathedral, Sydney, May 31, 1942 ("Sydney Morning Herald", June 1, 1942).
20. Fr. Rumble: *Radio Replies*, p. 410.
21. From *Selected Papal Encyclicals, 1928–32*, Catholic Truth Society, London.
22. The Very Rev. Dr. P. J. Ryan: Sermon in St. Mary's Cathedral, Sydney, May 4, 1941 ("Sydney Morning Herald", May 5, 1941).
23. See the article "Catholic Teaching and Nationalization" in "Our Australian Sunday Visitor" (an organ of the Brisbane Roman Catholic Archdiocese), September 1, 1946.

24. E. H. Lane: *Dawn to Dusk*, p. 245.

25. "Round Table": Vol. VIII, 1917–18, p. 393.

26. H. V. Evatt: "History of Federal Arbitration", "Australian Quarterly", September, 1937.

27. Elton Mayo: *The Australian Political Consciousness*, in Atkinson (Ed.), Australia, p. 137.

28. cf. Report of the Labour Defence Committee (which organized the strike): "This is over and above all others our greatest lesson—that our organization must become a means of education and constitutional power. Already it is half learnt. We have come out of the conflict a united Labour Party. The next general election must yield us the balance of power."

29. H. B. Lees Smith: *Second Chambers in Theory and Practice*, p. 109.

30. W. M. Hughes in *Nation Building in Australia* (Ed. Fitzhardinge), p. 239.

31. Cited in his own *History of the New South Wales Labour Party*, p. 7. In 1901 Federal Labour's five main planks were White Australia, Adult Suffrage, Old-age Pensions, Citizen Army and Compulsory Arbitration. In ten years all were law.

32. Evatt: *Australian Labour Leader*, p. 569.

33. A. N. Smith: *Thirty Years*, p. 98.

34. Resolution of Federal Labour Conference, Melbourne, July 1905.

35. Official Report of Fifth Federal Australian Labour Party Conference, Hobart, 1912: Introduction.

36. Official Report of Fifteenth Federal Australian Labour Party Conference, 1939, p. 49: J. Beasley.

37. The New Zealand watersiders are reported to have given the Hon. Walter Nash £3,500 for Party funds—*before* New Zealand Labour's electoral successes, *not* for services rendered.

38. Official Report of Fifteenth Federal Australian Labour Party Conference: 1939, p. 63, gave as the current paid-up membership: New South Wales 100,000; Victoria 100,000; Queensland 111,000; Western Australia 35,000; South Australia 12,000; Tasmania 13,000; New South Wales Labour was split into three factions at that time and should normally number more than 100,000. These figures include members of affiliated unions.

39. "Sydney Morning Herald", September 9, 1941: Press Statement by John Curtin: The Trustees were then C. Fallon, D. L. MacNamara, N. J. Makin and H. P. Lazzarini.

40. "Worker", Brisbane, December 2, 1941.

41. Melbourne "Herald", April 29, 1941.

42. Jauncey: *Story of Conscription in Australia*, p. 158, and "Australian Worker", February 6, 1919.

43. Cited in V. G. Childe: *How Labour Governs*, p. 6.

44. The "Worker" (Sydney) December 16, 1893: Cited in Evatt: *Australian Labour Leader*, p. 52.

45. Australian Labour Party (New South Wales) Rules and Constitution and the Policy and Platform, 1941–42 Ed., p. 45.

46. W. G. Spence: The "Worker" (Sydney), November 4, 1893, cited in Evatt: *Ibid.*, p. 51.

47. Joseph Cook, 1893, cited in V. G. Childe: *How Labour Governs*.

48. W. M. Hughes: *The Case for Labour* (1910), p. 75.

49. W. M. Hughes, 1911.

50. See Anstey's Speech as reported in the Melbourne "Argus", June 26, 1915.
51. T. Q. (From Sydney) in the London "New Statesman", April 3, 1915.
52. Reid: *My Reminiscences*, p. 93.
53. Parliamentary Debates, November 26, 1908.
54. W. G. Spence: *Australia's Awakening* (1909). p. 380.
55. Hughes: *The Case for Labour*, 1910, p. 81.
56. Piddington: *Worshipful Masters*, p. 124.
57. Hughes: Parliamentary Debates, Vol. LXXXI, p. 10,571, 1917.
58. Sydney "Worker", 1914: Cited in London "New Statesman", July 11, 1914, p. 428.
59. Sydney "Worker", April 23, 1914: Cited in Evatt, Australian Labour Leader, p. 340.
60. The Hon. Mark Gosling, New South Wales Chief Secretary, speaking of Lang, cited in Duncan (Ed.): *Trends in Australian Politics*, p. 164. Such "bossism" is unknown and virtually impossible in the Federal sphere, because the Prime Minister controls no machine and no funds.
61. See Jauncey: Australia's Government Bank.
62. See next chapter.
63. See comment on this incident in "Current Problems" (Sydney), November 15, 1941, p. 247.
64. W. M. Hughes: *The Case for Labour* (1910), p. 110.
65. W. K. Hancock: "New Statesman and Nation" (London), May 30, 1931, p. 485.
66. As related by the Minister for Works (Mr. Cahill) in a speech at Cooma: "Daily Telegraph", October 28, 1941.
67. See Parliamentary Debates, Vol. 81, pp. 10,888ff. (Especially pp. 10,899–10,901 of speech by J. M. Catts.)
68. Parliamentary Debates, Vol. 81, p. 10,848.
69. V. G. Childe: *How Labour Governs*, p. 17.
70. Discussion of the Caucus-election of Labour Ministers has been held over until the chapter on the Cabinet.
71. Lloyd Ross: *William Lane*, p. 358.
72. J. A. McCallum: "Australian Quarterly", September, 1939, p. 66.
73. "Round Table", March. 1920, pp. 432–3.
74. A Melbourne Correspondent: "New Statesman" (London), January 29, 1916.
75. Royal Commission on the Constitution, 1927. Evidence, p. 852: Brigden.
76. W. R. Maclaurin: *Economic Planning in Australia*, 1929–1936, p. 6.
77. "New Statesman", February 28, 1920, p. 609: Article by F. W. Eggleston.
78. cf. G. D. H. Cole: *British Working Class Politics*, 1832–1914, pp. 250–2.
79. cf. Jennings: *Parliament*, p. 185 (n).

CHAPTER IV

1. Carter Goodrich: "Economic Record" (Melbourne), November, 1929, p. 195.
2. Deakin: Parliamentary Debates, June 21, 1912.

3. Hancock: *Survey of British Commonwealth Affairs*, Volume II, Problems of Economic Policy, p. 90.
4. "The Economist" (London), July 20, 1940.
5. W. K. Hancock: *Australia*, p. 73.
6. "Sydney Morning Herald": November 5, 1943.
7. F. W. Eggleston: "Annals of the American Academy of Political and Social Science", Volume 158, November, 1931, p. 246.
8. Sir Herbert Gepp: "Business Cannot Afford Not to Have A Social Policy", "Rydge's", October, 1941.
9. Elton Mayo: "The Australian Political Consciousness", in *Australia* (Ed. Atkinson), p. 137.
10. Robert S. Lynd: Foreword to Brady, *Business as a System of Power*, p. xii.
11. S. M. Bruce: Cited in the "Australian National Review", March, 1937.
12. Jennings: *Parliament*, p. 167.
13. W. G. Spence: *Australia's Awakening*, p. 395.
14. Thurman Arnold: *The Folklore of Capitalism*, p. 343.
15. Deakin to Groom: Letter, January 18, 1909, cited in *Nation Building in Australia* (Ed. Fitzhardinge), p. 83.
16. Australian Correspondent: "New Statesman" (London), September 12, 1914, p. 683.
17. Parliamentary Debates, May 27, 1909: W. M. Hughes.
18. R. G. Menzies: As reported in the "Herald" (Melbourne), July 24, 1943. Forrest seems to have taken a similar view, see Parliamentary Debates, July 30, 1907 for speeches by Lyne and Forrest on the latter's resignation from the Treasurership. In his letter to Prime Minister Deakin, Forrest wrote: ". . . . In my opinion, however, the outlook in Parliament, *and the necessary observance of my election platform*, leave me no alternative." (My italics.)
19. F. W. Eggleston: "Annals of the American Academy of Political Science", November, 1931, pp. 247–248.
20. Australian Correspondent: "Round Table", March, 1922, pp. 406–7.
21. F. W. Eggleston in the "New Statesman", February 28, 1920, p. 609.
22. Cited in Parliamentary Debates, November 3, 1941: Fadden subsequently served under a United Australia Party Prime Minister, led a United Australia Party-United Country Party Government, and merged the Queensland United Australia Party and United Country Party.
23. Sumner H. Slichter: *Towards Stability*, pp. 187–188.
24. A. G. Cameron: Cited in Parliamentary Debates, December 3, 1940, p. 392.
25. "Sydney Morning Herald", August 20, 1943, described the National Union as "one of the most powerful anti-Labour private political organizations in Australia", while another paper characterized it as "the body which collects and controls the funds of the United Australia Party."
26. "Daily Telegraph" (Sydney), November 24, 1941: ". . . . While Prime Minister, Mr. Menzies was frequently in conflict with these organizations, especially in New South Wales."
27. Evidence to the Royal Commission on the "Secret Funds"; "Sydney Morning Herald", October 16, 1941.
28. T. S. Austin: "Sydney Morning Herald", April 6, 1943.

29. Ian MacFarlan, M.L.A.: Circular to his constituents, November, 1937.
30. T. S. Austin: Reported in Melbourne "Age", November 13, 1941.
31. Melbourne "Herald", Leader, November 27, 1941.
32. Melbourne "Age", November 11, 1941.
33. Melbourne "Age", Leader, November 18, 1941.
34. "Sydney Morning Herald", July 22, 1943.
35. "Sydney Morning Herald", August 24, 1943.
36. Hollway, M.L.A.: Reported in the "Age" (Melbourne), November 14, 1941.
37. "Daily Telegraph" (Sydney), November 24, 1941.
38. "Sydney Morning Herald", May 12, 1944.
39. Parliamentary Debates: Senate, July 2, 1941.
40. Senate Select Committee on Standing Committee Systems, 1929: Evidence, p. 45: Garling.

CHAPTER V

1. Royal Commission on the Constitution, 1927–9: Evidence, p. 730: F. W. Eggleston.
2. H. B. Higgins: Speech, April 18, 1898, reprinted as pamphlet, Melbourne, 1898.
3. Charles Hawker, M.P.: "Australian Quarterly", September, 1937, pp. 58–59.
4. A. T. Shakespeare: "Australian National Review", June 1939, p. 19.
5. Commonwealth v. Barger, and Commonwealth v. McKay (1908): 6 C.L.R., 41.
6. Quoted in *Official History of Australia in the Great War*, Vol. XI, p. 172.
7. Letter from the Governor-General to the Prime Minister, January 9, 1918. Cited in *Official History of Australia in the Great War*, Vol. XI, p. 182.
8. The Constitution left matters to Parliament for decision in Sections 7, 8, 9, 14, 16, 49, 50, 71, 73, 74, 76, 77, 78, 79, 94, 96, 101, 102, 112. In addition, many of its provisions remain in force only "until the Parliament otherwise provides", e.g. Sections 3, 7, 10, 22, 24, 27, 29, 30, 31, 34, 38, 46, 47, 48, 65, 66, 67, 87, 93, 97, 108.
9. Senate Select Committee on Standing Committee Systems, 1930: Evidence, p. 5: F. W. Eggleston.
10. Royal Commission on the Constitution, 1927–29: Evidence, p. 738: F. W. Eggleston.
11. cf. W. J. D. (Dignam): Privilege of Parliament, "Australian Law Journal", July 14, 1944.
12. Sir Harrison Moore: *The Constitution of the Commonwealth of Australia*, 2nd Edition, 1910, p. 123 (n).
13. Editorial, "Canberra Times", June 22, 1943.
14. Senate President Brown: Parliamentary Debates, March 9, 1943.
15. Spence: *Australia's Awakening*, p. 394.
16. Parliamentary Debates, 1905, pp. 5,721–2.
17. Eggleston: *Search for a Social Philosophy*, p. 175.
18. Murdoch, *Alfred Deakin*, Chapter XIV.
19. T. V. Smith: *The Democratic Tradition in America*, p. 74.
20. W. M. Hughes: Parliamentary Debates, May 28, 1909, Vol. XLIX, p. 175.

21. "Phineas": "New Statesman and Nation" (London), January 5, 1946.
22. R. G. Menzies, September 11, 1937: See reference in speech by F. Forde, Parliamentary Debates, September 14, Vol. 154, p. 975.
23. Melbourne "Herald": Canberra Correspondent, December 15, 1942.
24. Speaker McDonald: Parliamentary Debates, May 21, 1915.
25. Speaker Bell: Parliamentary Debates, May 1, 1940.
26. Parliamentary Debates, November 11, 1920. If the electorate re-elects an expelled member (Kalgoorlie did *not* re-elect Mahon) he can then resume his seat. (cf. Brennan: Parliamentary Debates, June 4, 1942).
27. Sir John Hall (New Zealand): Australian Federation Conference, 1890: Proceedings, p. 176.
28. Jennings: *Parliament*, p. 53.
29. W. M. Hughes in *Nation-Building in Australia* (Ed. Fitzhardinge), p. 243.
30. "Current Problems" (Sydney), December 18, 1941, p. 270.
31. Littleton Groom's Life Assurance Coy's. Act: Passed into law, November 23, 1905.
32. Sponsored by John Curtin and E. J. Holloway.
33. Ambrose Pratt: *David Syme*, p. 308.
34. Earl Russell: Quoted by Morley, *Life of Gladstone*, Vol. I, p. 521.
35. Wedgwood: "*Testament to Democracy*", p. 27.
36. "Fortune" (New York) Special Supplement, *November, 1943*: "Our Form of Government", p. 9.
37. See, for instance, Morley's *Gladstone*, Vol. II, passim.
38. Parker: Sir James Graham, Vol. I, pp. 288–9. (Quotation dates from 1839).
39. Ernest Barker: *Essays on Government*, p. 80.
40. Finer: *Theory and Practice of Modern Government*, p. 796.
41. Jennings: *Parliament*, p. 131.
42. Sir Isaac Isaacs: *Australian Democracy and our Constitutional System*, p. 7.
43. Laski: *Grammar of Politics*, p. 305.
44. The "guillotine" is the placing of a time limit on the stages of a Bill and especially the discussion of clauses of a Bill in Committee of the Whole.
45. Sir Isaac Isaacs: *Australian Democracy*, p. 11.
46. Sir Isaac Isaacs: *Ibid.*, p. 9.
47. Cited in Nettie Palmer: *Henry Bournes Higgins*.
48. Parliamentary Debates, October 1, 1919.
49. Parliamentary Debates, December 9, 1940.
50. John Curtin: "Australian Quarterly", June, 1938, p. 5.
51. J. H. Hofmeyer, South African Attorney-General: Inaugural Address as Chancellor of the University of Witwatersrand, March 11, 1939.
52. Parliament did not sit at all in the six months ended April, 1938.
53. The Reid-McLean Government had Parliament in recess from December 15, 1904 to June 28, 1905.
54. In those days £10,000,000 for Defence was a relatively huge sum. Tempora mutantur!
55. Evatt: "Administrative Law in Australia", "Canadian Bar Review", 1937, Vol. XV, No. 4, p. 252.
56. Maurice Blackburn, M.P.: Parliamentary Debates, June 25, 1941.

57. Australian Correspondent: Round Table (London), Vol. IV, 1913–14, pp. 164–5.

58. Parliamentary Debates, March 6, 1942: (Since this book was completed Parliamentary allowances have been raised from £1,000 to £1,500 and the allowance of the Leader of the Opposition from £400 to £600.)

59. "Current Affairs" (Sydney), July 6, 1939, pp. 214–5.

60. See Section 105A of the Constitution and the Financial Agreement made under it. The Parliament does, of course, give legislative effect to decisions of these bodies, but its action is usually little more than formal *post facto* approval. It is a fact of Australian politics that the continual emergence of Commonwealth financial dominance has been matched with a diminishing detailed financial control by the Commonwealth Parliament. The initiative and decision in national financial policy and practice lie increasingly with Commonwealth and State Cabinets and their representatives in joint conference.

61. But see J. E. Edwards: The Powers of the Australian Senate in Relation to Money Bills, "Australian Quarterly", September, 1943, pp. 75–86.

62. On August 14, Lyne, deputizing for Deakin who was ill, brought down a message from the Governor-General suggesting an increase in Parliamentary allowance from £400 to £600. He said it was not to be treated as a Government measure but as a Private Bill on which Members were free of Party Whips and could vote as they liked. This raised strong objections from many Members who insisted that a Bill asking for increased public expenditure should be a Government measure and, brought down by the Acting Prime Minister on the written suggestion of the Governor General, could never be held or treated as a Private Bill.

63. Parliamentary Debates, October 6, 1943: R. G. Menzies.

64. Parliamentary Debates, May 19, 1942: John Curtin (A private Senator may, however, move a "request" for a variation up or down.)

65. Parliamentary Debates, Vol. LXII (1911), p. 3,107: Alfred Deakin.

66. Senate Select Committee on Standing Committee System: Evidence, p. 24: M. Blackburn, M.P. (Parliamentary Papers, 1929–30).

67. The unfortunate system of Parliamentary Committees in France under the Third Republic did enable leading parliamentarians to keep closely in touch with their specialities, with the result that when they became Ministers or became Ministers again they were very well up in the essential facts. For instance Rouvier, who was Finance Minister for over seven years in all, was a member of the budget and finance committees of the Chamber for 24 years as well. cf. Heinberg: "The Personnel Structure of French Governments", "American Political Science Review", April, 1939, pp. 267ff.

68. Sir Littleton Groom: "Brisbane Courier", November 29, 1930, cited in *Nation Building in Australia*, p. 27.

69. It is much less true now that, as Professor K. H. Bailey in 1930 told the Senate Select Committee on Standing Committee Systems, "both in New Zealand and Canada the most active committees are those which deal with matters with which, in Australia, we would expect the State Parliaments to deal."

70. 37 House of Commons Debates, 5 S., p. 367.

71. Both quotations from Parliamentary Debates, July 3, 1941.

72. "Broadcasting Dangers", by A Special Correspondent, "Sydney Morning Herald", April 6, 1943.

73. The "Argus" (Melbourne), March 29, 1916, p. 8.

74. Australia has seen some marathon (though not necessarily wasteful) performances by Commissions and Committees; thus the Royal Commission on Tariffs set up by George Reid under John Quick's chairmanship sat 404 days and heard 618 witnesses.

75. Wynes, A., *The Legislative and Executive Powers of the Commonwealth*, p. 259.

76. The Manual of Procedure of the Public Works Committee (1940) is an interesting and useful source on committee work of the sort under discussion.

CHAPTER VI

1. H. G. Turner: *The First Decade of the Commonwealth* (1911), p. 307.
2. National Convention (1891), Debates, p. 65: Captain W. R. Russell (New Zealand).
3. National Convention, 1891, Debates, p. 200: The wording here is the slightly edited version in Cockburn's collected speeches, *Australian Federation* (1901), pp. 142ff.
4. National Convention, 1891, Debates, p. 74: Alfred Deakin.
5. National Convention, 1891, Debates, p. 75: Alfred Deakin.
6. John Cockburn: Election speech, February 18, 1897. Reproduced at pp. 166ff., *Australian Federation.*
7. National Convention (1897, Sydney), Debates, p. 584: Alfred Deakin.
8. A. B. Piddington: *Popular Government and Federation* (1898): p. 16.
9. Editorial, "Sydney Morning Herald", September 18, 1943.
10. Senate Committee on Standing Committee System, 1929, Evidence, p. 23: Maurice Blackburn.
11. J. F. Moseley: Letter in "Sydney Morning Herald", August 30, 1943.
12. Senate Committee on Standing Committee System, 1929, Evidence, p. 29: Ex-Senator J. H. Keating.
13. Parliamentary Debates (Senate), December 1, 1944: Senator Ashley.
14. Parliamentary Debates (Senate), April 3, 1941: Senator Keane.
15. Senate Select Committee on the Standing Committee System, 1929, Evidence, p. 45: Ex-Senator H. C-M. Garling.
16. *Ibid.*, p. 13: R. G. Menzies. Hardworked Parliamentary draughtsmen are, however, always happy to have the extra opportunity to pick up slips and refine texts.
17. E. T. Brown: *Bread and Power*, p. 78.
18. Sir Harrison Moore: *The Commonwealth of Australia*, Second Edition, p. 152.
19. E.g. those on the Conciliation and Arbitration Bill, 1930, and the Northern Territories (Administration) Bill, 1931.
20. For a useful exposition of this question see an article by the Clerk of the Senate, J. E. Edwards: "The Powers of the Australian Senate in Relation to Money Bills": "Australian Quarterly", September, 1943. It should be noticed that the Senate won victories as early as June, 1901 and recently as 1943 on the strength of its ability under Section 53 to force the hands of Governments with support in the House of Representatives. See Harrison Moore: *Commonwealth of Australia*, pp. 140–151.
21. Australian Correspondent: The "Round Table", Vol. IV (1913–14), p. 734.
22. Senate Select Committee on the Standing Committee System, 1929, Evidence, pp. 28–9: Ex-Senator J. H. Keating.

23. Royal Commission on the Constitution, Evidence, p. 974: Sir Henry Barwell.

24. Statement by Senator Johnston to the Press: See "Daily Telegraph" (Sydney), June 5, 1942.

25. Senate Select Committee on the Standing Committee System, Evidence, p. 29: Ex-Senator Keating.

26. Royal Commission on the Constitution. Evidence, p. 8: H. S. (afterwards Mr. Justice) Nicholas.

27. Earl of Dudley: Some Impressions of Australia, Address to the Royal Colonial Institute, January 9, 1912.

28. Sir Harrison Moore: "Political Systems of Australia" from *Australia: Economic and Political Studies* (Ed. Atkinson), p. 112.

29. In 1901–2 the ratio was: House of Representatives 31: Senate 11; in 1903, 18:9; in 1904, 15:9; in 1905, 24:6; in 1906, 26:7; in 1907, 33:21.

30. For an account of the present Senate election system see Chapter II.

31. See Parliamentary Debates, March 1 and 2, 1917, and especially Vol. 81, pp. 10,888ff., and in particular the speech by J. H. Catts at pp. 10,899–10,901, and the speech by Senator Watson in the Senate.

32. See Vardon v. O'Loughlin (1907), 5 C.L.R. 201; and Harrison Moore: *Commonwealth of Australia*, Second Edition, p. 114.

33. Section 20 of the Constitution provides for such action.

34. Reproduced in Lees Smith: *Second Chambers in Theory and Practice*, pp. 32–3; Jennings: *Parliament*, pp. 424–5.

35. Henry Turner: *The First Decade of the Commonwealth*, p. 259.

36. "Sir Robert Gibson was by this time extremely alarmed at the situation and believed that the currency was in grave danger. The Commonwealth Bank's stand against the Government is almost unique in central banking history. It was made possible by the fact that Sir Robert believed that the Senate and the majority of the public would support him in opposing the Government. As already pointed out, if it had not been for the Senate the banking system would have been materially altered, and Labour would have been able to go forward with its programme." (Maclaurin: *Economic Planning in Australia*, 1929–1936, p. 76).

There would appear to be *prima facie* grounds for suspecting collusion between Opposition Senate leaders and Sir Robert Gibson over his summons to the bar of the Senate, but that likelihood in this instance is no ground for rejecting the practice involved.

37. Parliamentary Papers, 1934: Constitutional Conference, Proceedings, p. 26.

38. Senate President Kingsmill did suggest such a committee to the Senate Select Committee on Standing Committee Systems (1930), Evidence, p. 3. See also article by Sir Harrison Moore: "Australian Quarterly", June, 1931.

39. Senate Select Committee on the Standing Committee System, Evidence, p. 16: Professor K. H. Bailey.

40. Senate Select Committee on the Standing Committee System: Report, p. xi.

CHAPTER VII

1. Royal Commission on the Constitution, 1927: Report, p. 50.

2. Baxter's Case 4 C.L.R. 1,105–7; Engineer's Case 28 C.L.R. 146–8.

3. Harrison Moore: *Commonwealth of Australia*, Second Edition, 1910, p. 98.

4. *Ibid.*, p. 292.

5. Even in 1901—cf. Quick and Garran, pp. 699-700—and they have since greatly increased.

6. National Convention Debates (1891), p. 198: Cockburn.

7. Sir Richard Baker: *The Executive in a Federation*, (1897).

8. Sir Samuel Griffith: *Notes on Australian Federation* (1896), p. 20.

9. Sir Harrison Moore: *Commonwealth of Australia*, Second Edition, 1910, p. 294.

10. *Ibid.*, pp. 168–169.

11. An Executive Council quorum is the Governor-General or Vice-President of the Executive Council and two other Ministers.

12. In the dark days of May-June, 1940, ways and means were apparently discussed of bringing non-Parliamentarians into Cabinet, or at least into some very close relationship to Cabinet by making them Executive Councillors ("Sydney Morning Herald", June 3, 1940). The idea was dropped. But Prime Minister Menzies did make Essington Lewis (head of the Broken Hill Proprietary) Director of Munitions Supply, responsible directly to himself. In the first two war years other leading industrialists assumed major administrative functions: Sir Harry Brown (General Electric), L. J. Hartnett (General Motors), Sir Ernest Fisk (Amalgamated Wireless), W. J. Smith (Australian Consolidated Industries) and Sir Walter Massy-Greene (Electrolytic Zinc Corporation). Some of these industrialists were retained in the same positions by the subsequent Labour Government. For rather different, essentially political reasons the Menzies Government also made use of the services of leading Opposition (Labour) Members in honorary administrative positions, J. B. Chifley in February, 1941 became Director of Labour in the Department of Munitions and Dr. H. V. Evatt, Director of Reconstruction Research in the Department of Labour and National Service. The later Curtin (Labour) Government used the services of A. W. Coles, M.P. and of W. V. McCall, M.P. on the Rationing Commission for much the same kind of reasons.

13. Parliamentary Debates, June 25, 1941: Maurice Blackburn, M.P.

14. Royal Commission on the Constitution, 1927, Evidence, p. 398: Maurice Blackburn.

15. Sir Harrison Moore: *Commonwealth of Australia*, Second Edition, 1910, p. 144.

16. "Men of honour" in this sense are apparently less common than occasions of major Cabinet divisions. But they do appear. In 1937, for instance, Sir Henry Gullett resigned because he disagreed with phases of the current "trade diversion policy". In 1938, T. W. White resigned, not on a policy issue so much as on the issue of the process of policy-making: He objected to the development of what he held was in fact an "Inner Cabinet"—an attitude which his Prime Minister described as "discreditable". Actually if a Minister is prepared to bow to the majority view amongst his colleagues without public protest, qualification or personal dissociation, there is no reason why he should resign.

In other categories from the cases just referred to are the resignation of J. N. Lawson in February, 1940, after involving himself in "The Case of the Rented Racehorse" and the refusal of Jens Jensen to resign in 1919 when involved in a Royal Commission enquiry into the Commonwealth purchase of a wireless factory in New South Wales (after his refusing Cabinet's request for his resignation he was removed from office by notice in the Commonwealth Gazette and lost his seat at the next election).

17. *Quick and Garran on the Constitution*, pp. 704–706.

18. In Britain the first passing mention of the office of Prime Minister in an Act is understood to have been in the Chequers Estate Act, 1918. In Australia a direct reference was made in Section 22 of the Public Service Act, 1922, and to the Prime Minister's Department in the schedules to Appropriation Acts. There is apparently no constitutional or statutory reference to Cabinet as such Though in the Commonwealth Bank Act, 1945, Section 9, there is reference to "the Government", there is no mention of the meaning to be attached to that term in the definitions section.

19. The coalition for parliamentary purposes had a somewhat broken history in 1939–40.

20. W. G. Spence: *Australia's Awakening*, pp. 396–7.

21. Sir George Reid: *My Reminiscences*, pp. 239 and 32.

22. There was, however, one instance to the contrary. Watson, in allocating portfolios in the first Labour Government was unwilling to make W. M. Hughes Attorney-General on the ground that he had just graduated in law and would not gain the approbation of the House in that position. He therefore went outside the Labour Party to H. B. Higgins, the Radical-Liberal, for an Attorney-General, who undoubtedly strengthened the Ministry.

23. F. W. (Sir Frederick) Eggleston: "New Statesman" (London), September 20, 1919, p. 613.

24. F. Alexander: *Cambridge History of the British Empire*, Vol. VII, Part I, p. 607.

25. J. A. Beasley's selection in 1929 has been attributed by some commentators to Sydney Trades Hall pressure on New South Wales Labour Members.

and Agriculture, Resident Minister in London, External Territories, War Service Homes, Supply and Development, Supply and Munitions, Supply and Shipping, Munitions, Aircraft Production, War Organization of Industry, Army, Air, Civil Aviation, Transport, Home Security, Information, Post-War Reconstruction, Immigration. The most recent copy of the Parliamentary Handbook will supply details of the creation and duration of these portfolios, many of which have no present existence

34. Cited in Ernest Scott's Volume (XI) of the *Official War History*. p. 175.

35. Morley: *Gladstone*, Volume I, p. 488.

36. "Round Table" (London), March, 1920, p. 429. (It is of interest that, continuously from 1900–1914 Deakin found time to be (anonymously) Australian Correspondent of the London "Morning Post").

37. F. W. (Sir Frederick) Eggleston: *Search for a Social Philosophy*, p. 173.

38. R. G. Menzies: *The Australian Economy During War*, Fisher Lecture, 1942, p. 7.

39. "The Worker" (Sydney), February 6, 1919. For an extensive, though partisan, account see Jauncey: *The Story of Conscription in Australia*.

40. Post-Master General W. Webster: The "Argus" (Melbourne), December 26, 1917. W. M. Hughes had prevented the holding of an Interstate Labour Conference before the 1916 Referendum to ensure that the Labour Party federally had no policy on conscription: this left Caucus as the body to decide the issue and Hughes apparently felt more capable of swaying a majority of Caucus.

41. Charles H. Wilson: "The Times" (London), November 5, 1943.

42. Harrison Moore in *Australia* (Ed. Atkinson), p. 117. For an account of the lengths to which Caucus sometimes attempted to go see pp. 117–9 of that book.

43. T. Q., the Australian correspondent of that journal, in the "New Statesman" (London), March 28, 1914, p. 780. He was speaking of a State Government but the same general comment has been applied equally to *Commonwealth* Labour Cabinets.

44. See, for instance, reference to War Cabinet discussion of the Greek campaign in the "Sydney Morning Herald", May 17, 1941, or Full Cabinet discussion of the Budget in the Adelaide "News", December 4, 1940.

45. Parliamentary Debates, May 27, 1909.

46. Cf. Walter Murdoch's *Alfred Deakin* and Ambrose Pratt's *David Syme* on the influence of the "Age" in particular, and of the "Argus", in the days when Melbourne was the temporary seat of the Federal Parliament.

47. F. W. Eggleston: "The New Statesman" (London), May 29, 1920.

48. M. Savage: The *High Adventure*, Australian Quarterly, December, 1941, p. 75.

49. Parliamentary Debates, June 25, 1941: Maurice Blackburn.

50. Parliamentary Debates, June 24, 1941: R. G. Menzies.

51. *Ibid.*

52. The morning press of 21st and 7th of February, 1942 respectively: the Prime Minister explained that these men did not have the status of Assistant-Minister. The most remarkable feature of the appointments was the fact that Alex. Wilson (Independent Country Party) had no affiliation with the Government party, though his support was vital.

53. D. R. Jenkins: "Policy and Strategy of the New Zealand Labour Party", "Pacific Affairs", Vol. XII, 1939, p. 61.

54. See Threlfall's article in the "Sydney Morning Herald", March 23, 1939.

55. See Sir Frederick Sheddon's evidence to the Royal Commission on the Brisbane Line: "The Herald" (Melbourne), July 5, 1943.

56. "Sydney Morning Herald", March 10 and 11, 1939.

57. For accounts of the Hobart Cabinet meeting see "Sydney Morning Herald", February 4 and 6, 1939.

58. Newspaper reports suggested that the Cabinet meeting of January 17–18, 1946, had some 50–60 agenda before it.

59. "Sydney Morning Herald", August 28, 1942.

60. Press release by the Prime Minister, January 19, 1946.

61. The details given here are drawn from the "Sydney Morning Herald", of November 13 and 22, 1939.

62. "Sydney Morning Herald", June 27, 1941.

63. Press release by Prime Minister Chifley announcing the end of Production Executive, January 7, 1946.

64. See letters between Menzies and Curtin reproduced in Warren Denning: *Australian National War Council* (Pamphlet, Canberra, 1940), p. 5.

65. Parliamentary Debates, June 25, 1941: A. G. Cameron.

66. A. W. Fadden, M.P.: "Sydney Morning Herald", August 15, 1942.

67. Press release, January 19, 1946: J. B. Chifley.

CHAPTER VIII

1. Convention Debates, 1891, p. 563: Sir George Grey.

2. Convention Debates, 1891, pp. 571–2: Speech by Sir John Downer. (*The Novar Papers* reveal that one of Australia's ablest and most experienced Governors-General, Sir Ronald Munro-Ferguson, while not overstepping the bounds of his proper powers, proved a very active figure in Australian affairs.)

3. Convention Debates, 1891, p. 566: Sir Samuel Griffith. (In fact the appointment of Sir Isaac Isaacs as Governor-General in 1931 demonstrated how the appointive principle can be reconciled with opening this high office to distinguished Australian citizens).

4. *Quick and Garran on the Constitution*, p. 306.

5. *Quick and Garran on the Constitution*, p. 406. For their lists of powers in the two groups see their pp. 404–5.

6. When in November, 1939, J. V. Fairbairn was appointed Minister for Air he was in Canada. He was sworn in as Australian Minister of State for Air on November 14 by the Canadian Governor-General, Lord Tweedsmuir, in Ottawa, so that he could enter on his responsibilities immediately. This was the first instance of a Minister of one Dominion being sworn in by the Governor-General of another.

7. Convention Debates, 1891, p. 570: Alfred Deakin.

8. Lord Dufferin: Speech at Halifax, Nova Scotia, August, 1873, Leggo's Life of Lord Dufferin, p. 662, cited in Quick and Garran, p. 700.

9. Esher: *Letters and Journals*, III, pp. 126–28; for Asquith's memorandum see Spender and Asquith: *The Life of Lord Oxford and Asquith*, II, pp. 29–31.

10. As it happens the only Australian Governor-General ever recalled—incidentally the Commonwealth's first Governor-General—was recalled at his own request after a difference with the Commonwealth Government over his annual allowances.

11. George Reid: *My Reminiscences*, p. 237. (Cook got a double dissolution in 1914 in the first year of the Parliament's life.)

12. *Ibid.*, p. 246. The last assertion is hardly true any longer: See below.

13. Parliamentary Papers, 1914–17, p. 1,234: Cabinet Minute from Fisher to Governor-General.

14. A. B. Keith: *Responsible Government in the Dominions*, Second Edition (1928), Vol. I, p. 154. See also F. Alexander: "The Governor-General and Dissolutions" ("Australian Quarterly", September, 1930) and "The Governor-Generalship" in "Stead's Review", Vol. 67, No. 6, June, 1930.

15. See Evatt: "Australia on the Home Front, 1914–18", Review Article, "Australian Quarterly", March, 1937.

16. "Memorandum by Sir Samuel Griffith, Chief Justice of Australia, on the 'Double Dissolution' Section of the Constitution" (From the Novar Papers), reproduced in Ernest Scott's volume of the *War History*, p. 19.

17. Evatt: *The King and His Dominion Governors*, 1936, p. 45.

18. Message of Governor-General to the Senate, June 20, 1914 (Parliamentary Debates). The correspondence which passed between the Governor-General and the Prime Minister is set out in Parliamentary Papers, 1914–17, Vol. 5, pp. 129ff.

19. Ernest Scott: Vol. XI of the *Official War History*, p. 177.

20. *Ibid.*, p. 182.

21. Evatt: *The King and His Dominion Governors*, p. 155.

22. Parliamentary Debates, January 10, 1918: Governor-General's Memorandum read by W. M. Hughes.

23. For an amusing and informative account of the Munro-Ferguson-W. M. Hughes relationship see Scott, Vol. XI of the *Official War History*, pp. 174–190.

24. cf. Ernest Scott: *Official History of Australia in the War of 1914–18*, Vol. XI, p. ix: "Until a late period of the war it was the practice for all telegrams from the Secretary of State to be sent to the Governor-General, who at once forwarded copies to the Prime Minister. . . . Messages from the Prime Minister to the Secretary of State were also forwarded through the Governor-General."

25. Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926.

26. Evatt: *The King and His Dominion Governors*, p. 235.

27. Parliamentary Debates, November 26, 1931: Letter read by the Prime Minister.

28. Evatt, p. 237.

29. A list of instances where Bills have been returned with suggested amendments by the Governor-General appears at p. 53 of Sir George Knowles' annotated edition of the Constitution.

30. Parliamentary Debates (Senate), October 9, 1902: Senator O'Connor.

31. Evatt: *Monograph on the Statute of Westminster Adoption Bill, 1942*, p. 15.

32. *Ibid.*, p. 18. In an appendix of the Monograph is a list of Bills reserved for the Royal Assent in the history of the Commonwealth.

33. Parliamentary Debates, June 10, 1931: Message from the Governor-General. (A 1937 amendment of the Acts Interpretation Act apparently ruled out any repetition of this 1931 incident.)

34. Evatt: *The King and His Dominion Governors*, pp. 188–9.

CHAPTER IX.

1. Sir H. Moore in *Australia. Economic and Political Studies* (Ed. Atkinson), p. 89. On the level of salaries see the remarks of R. G. Menzies and Harold Holt in the Estimates Debate, 1943 (Parliamentary Debates, October 13, 1943), where Holt stated that the average salary in the service was then £362 per annum and that only 332 permanent officers were receiving over £750. Heads of Departments received only from £1,200 to £2,500. Substantial increases occurred in 1947.

2. C. E. W. Bean: *War Aims of a Plain Australian*, pp. 71–2.

3. R. G. Menzies: *The Australian Economy During War*: Fisher Lecture, 1942, p. 6.

4. W. MacMahon Ball in *National Economic Planning* (Ed. Duncan), p. 95.

5. R. M. Dawson: "The Impact of the War on Canadian Institutions", "Canadian Journal of Economics and Political Science", May, 1941, pp. 183–4. For the same criticisms from an Australian see two articles by A. J. Grenfeld: "Tracking Down the Bureaucrat", "Rydge's Journal", April and May, 1946.

6. "The Times" (London), August 25, 1942.

7. Hewart: *The New Despotism*, London.

8. C. K. Allen: *Bureaucracy Triumphant*, London.

9. W. A. Robson: *Justice and Administrative Law*, London, 1928, p. 34.

10. K. C. Wheare: "The Machinery of Government", An Inaugural Lecture, "The Times" (London), November 17, 1945.

11. Herbert Morrison: *Socialization and Transport*, p. 132.

12. Tyler Dennett: "The Bureaucrat at Large", "Australian National Review", April, 1939, p. 8.

13. C. B. Swisher: *The Growth of Constitutional Power in the United States*, (New York).

14. Cf. R. A. Brady: *Business as a System of Power* (New York).

15. Harold Ickes: "Bureaucrats v. Businessmen", "New Republic" (New York), August 2, 1943, p. 131.

16. K. C. Wheare: "Times" (London), November 17, 1945.

17. Herbert Morrison: Socialization and Transport, pp. 106– 107.

18. David Lloyd George: *War Memoirs*, p. 1,171.

19. "Current Problems" (Sydney), August 8, 1939, p. 230.

20. Parliamentary Debates, June 25, 1941: J. A. Beasley.

21. Royal Commission on the Constitution: Evidence, p. 1,113, J. V. Dwyer, General Secretary, Amalgamated Postal Workers' Union of Australia.

22. Mr. Justice Higgins in Baxter v. Ah Way (1909), 8 C.L.R. at 646. In Meakes v. Dignan (1931), 46 C.L.R. at 84, the then Chief Justice affirmed that the High Court had uniformly followed Higgins' view, stressing, *inter alia*, that it was following the British pattern in so doing. The full extent of the power of delegation was authoritatively explored

and stated in the judgments on Roche v. Kronheimer (1921), 29 C.L.R. 329. For recent stress on the Federal limitations on Commonwealth powers of delegation see judgments in Stenhouse v. Coleman (1944), 69 C.L.R. 457 and Shrimpton v. Commonwealth (1945), 69 C.L.R. 613.

23. British Committee on Ministers' Powers: Report, 1932, p. 23.

24. Senate Select Committee on Standing Committee Systems: Evidence, p. 13: R. G. Menzies.

25. Parliamentary Debates, April 30, 1942: R. G. Menzies.

26. Senate Select Committee on Standing Committee Systems: Evidence, pp. 18–19: K. H. Bailey.

27. Herbert Morrison: Speech at Plymouth, March 19, 1944.

28. Mr. Justice Dixon in Meakes v. Dignan (1931), 46 C.L.R. at 109.

29. Stenhouse v. Coleman (1944), 69 C.L.R. 457, at 466: Starke, J.

30. See K. H. Bailey: "Administrative Legislation in the Commonwealth", "Australian Law Journal", May 15 and June 15, 1930.

31. Parliamentary Debates, April 30, 1942: R. G. Menzies.

32. Senate Select Committee on Standing Committee Systems: Evidence, p. 32: Sir John Peden. It is perhaps unfair to quote statistics relating to wartime National Security Regulations when discussing normal peacetime regulations, but they have some intrinsic interest. Between September, 1939 and July 17, 1944 some 1701 regulations were made under the National Security Act; only 17 motions of disallowance were moved in the Senate and 13 in the Representatives (3 of these duplicating the Senate motions), and of these motions only 8 were agreed to. The existence and occasional use of the power of disallowance exercises a measure of restraint on the draftsmen of all such regulations.

33. Senate Select Committee on Standing Committee Systems: Report, pp. x–xi.

34. Senate Standing Committee on Regulations and Ordinances: Fourth Report, p. 3.

35. Parliamentary Debates (Senate), August 25, 1937: Minister representing the Attorney-General.

36. Meakes v. Dignan (1931), 46 C.L.R. at 129: Evatt, J.

37. D. W. Logan: "Delegated Legislation", "Political Quarterly" (London), July 1944, pp. 190–1.

38. See, for instance, in the "Australian Law Journal", (1) "The Defence Power and Total War" by Sugerman and Dignam (November, 1943) and, (2) "*Delegated and Sub-delegated Legislation*" by R. Else Mitchell (July, 1943).

39. Dean Landis of Harvard: quoted by C. G. Haines, "American Political Science Review", February, 1940.

40. H. J. Laski: "Discretionary Power", "Politica", February, 1935.

41. K. H. Bailey: quoted by F. A. Bland, *Planning the Modern State*, p. 78.

42. It is not proposed to traverse Dicey's views and criticisms of Dicey here—for these see Wade's (ninth) Edition of Dicey: *The Law of the Constitution* and W. I. Jennings *Law and the Constitution*, Second Edition.

43. W. A. Robson: *Justice and Administrative Law*, pp. 303–4.

44. The President's Veto Message to Congress was published in the "New York Times" of December 19, 1940. For two outstanding American contributions on this subject see opinions of Mr. Justice Brandeis in the St. Joseph Stock Yards Case (1936), 298 U.S. 38, 49 and in Crowell v. Benson (1932), 285 U.S. 22.

45. Though judgments like that in Royal Aquarium v. Parkinson (1892), 1 Q.B. 431 were already distinguishing some proceedings as "administrative acts to be performed in a judicial way" from the category of purely judicial acts.

46. See Waterside Workers' Federation v. J. W. Alexander Ltd. (1918), 25 C.L.R. 434; Chief Justice Knox's judgment in British Imperial Oil Company v. Federal Taxation Commissioner (1925), 35 C.L.R. 422, especially at 432–3; Lord Chancellor Sankey in Shell Company v. Federal Taxation Commissioner, 1930 Appeal Case reported in 44 C.L.R. 530 at p. 532, and Anstey Wynes: "The Judicial Power of the Commonwealth", "*Australian Law Journal*", November 12, 1937.

47. Federal Taxation Commissioner v. Munro (1926), 38 C.L.R. at pp. 175–7.

48. Meakes v. Dignan (1931), 46 C.L.R. at pp. 115–6.

49. L. C. Sankey: Shell Company v. Federal Taxation Commissioner, Privy Council Appeal Cases, 1930. Reported in (1930), 44 C.L.R. at pp. 544–5.

50. Mr. Justice Evatt: "The Judiciary and Administrative Law in Australia", "Canadian Bar Review", 1937 (Reprint of an address in Sydney, December 3, 1936).

51. W. Ivor Jennings: "Political Quarterly" (London), October, 1945, p. 362.

CHAPTER X

1. As provided in Sections 73, 75 and 77, the High Court was or could be invested with a wide range of original or appellate jurisdictions. It is not the purpose of this chapter to look at the Court's functions other than that of interpreter of the Constitution, and that only in broad terms from the point of view of its relation to the parliamentary government of the Commonwealth.

2. R. R. Garran: *The Coming Commonwealth*, 1897, pp. 152–3.

3. E. M. Hunt: *American Precedents in Australian Federation*, 1930, p. 247.

4. Convention Debates, Adelaide Session, 1897, p. 68: Sir Edward Braddon.

5. Convention Debates, Melbourne Session, 1898, p. 2,503: Alfred Deakin.

6. Sir Samuel Griffith: Address at the inauguration of the High Court, 1903.

7. For conclusive argument see In re Judiciary Act, 1903–20 (1921), 29 C.L.R. 257.

8. Royal Commission on the Constitution: Evidence, p. 773: P. D. Phillips.

9. Parliamentary Debates, March 18, 1902: Alfred Deakin.

10. Parliamentary Debates, April 10, 1946: R. G. Menzies.

11. *Ibid.*

12. Griffith, C. J.: D'Emden v. Pedder (1904), 1 C.L.R. at 105 and 112.

13. Griffith, C. J.: Wollaston's Case (1904), 1 C.L.R. at 606.

14. Griffith, C. J.: Railway Servants' Case (1906), 4 C.L.R. 488, at 534.

15. Sir Harrison Moore: *The Commonwealth of Australia*, Second Edition, p. 559.

16. H. V. Evatt: "Constitutional Interpretation in Australia", "University of Toronto Law Journal", 1939, p. 9.

17. Griffith, C. J.: Attorney-General of New South Wales v. Brewery Employees Union (1908), 6 C.L.R. at 500.

18. *Ibid.*, at 501.

19. See, for instance, Griffith, C. J. in Deakin v. Webb and Lyne v. Webb (1904), 1 C.L.R. at 608.

20. Griffith, C. J.: D'Emden v. Pedder (1904), 1 C.L.R. at 119.

21. Griffith, C. J.: Baxter's Case (1907), 4 C.L.R. at 1,106.

22. For Higgins' own words see his dissent in Commonwealth v. McKay (1908), 6 C.L.R. at 113.

23. Quoted in Nettie Palmer: *Henry Bournes Higgins*, p. 247.

24. Isaacs, J.: Federal Tax Commissioner v. Munro (1926), 38 C.L.R. at 180.

25. Mr. Justice Evatt pointed out that at the very outset of his career on the Court (Baxter's Case, 1907, 4 C.L.R. at 1,158–60, Isaacs himself once displayed a passing willingness to accept the doctrine of "immunity of instrumentalities"—see Evatt in "University of Toronto Law Journal", 1939, pp. 6 and 9.

26. Isaacs, J.: Builders' Labourers' Case (1914), 18 C.L.R. 224 at 244.

27. The Engineers' Case (1920), 28 C.L.R. at 141–2, 150–1: per Isaacs, J.

28. *Ibid.*, at 160, per Isaacs, J. It is interesting to recall that at the very beginning of the Court's history, Mr. Justice O'Connor, in a concurring opinion, wrote: "I do not think it can be too strongly stated that our duty in interpreting a Statute is to declare and administer the law according to the intention expressed in the Statute itself. In this respect the Constitution differs in no way from any statute of the Commonwealth or of a State." (Tasmania v. Commonwealth of Australia and Victoria [1904], 1 C.L.R. at 358).

29. Since these paragraphs went to press, a majority of the High Court, in judgments in the Melbourne City Council's Banking Case (1947), A.L.R. 377, has insisted strongly that Engineers' Case doctrines do not allow what may reasonably be regarded as Commonwealth legislative interference with or discrimination against "State functions as such". Whether and to what extent this means some re-enthronement of older (Griffith) doctrines remains to be seen. This reaction is not entirely a "bolt from the blue", as Mr. Justice Dixon and other members of the Court have more than once insisted on qualifications upon any too sweeping view of the Engineers' Case doctrines, qualifications which they feel essential to the continued existence of federalism. For the 1947 Banking Case judgment and for comment on the whole matter by J. D. Holmes, see *Australian Law Journal*, September, 1947.

30. New South Wales v. Commonwealth (1931) 46 C.L.R. 155, 235, 246 (three cases).

31. South Australia v. Commonwealth (1942), 65 C.L.R. 373.

32. *Ibid.*, at 429.

33. Evatt: "University of Toronto Law Journal", 1939, p. 8.

34. Pirrie v. McFarlane (1925), 36 C.L.R. at 213.

35. K. H. Bailey: *Studies in the Australian Constitution* (Ed. Portus), p. 46.

36. Evatt: "University of Toronto Law Journal", 1939, p. 22.

37. I believe that the only appeal in an *inter se* case so far certified to the Privy Council by the High Court is the Colonial Sugar Case (1914), A.C. 237. The famous case in the second category was Webb v. Outrim (1907), A.C. 81, which led to the Commonwealth Parliament's closing this avenue by the amending Judiciary Act of 1907 (See Part I of this chapter). The best known recent case in the third category is James v. the Commonwealth (1936), A.C. 578; it falls there rather than in the first category because "the question whether section 92 of the Constitution is infringed or not does not involve any question as to the limits *inter se* of the constitutional powers of the Commonwealth and the States."

38. Griffith, C. J.: Wollaston's Case (1904), 1 C.L.R. at 622.

39. O'Connor, J.: *Ibid.*, at 631.

40. Webb v. Outrim (1907), A.C. 81.

41. Baxter's Case (1907), 4 C.L.R. at 1,117–1,118.

42. *Ibid.*, at 1,111.

43. Cited, significantly enough, by Isaacs J. when the Court turned it's back on the Griffith philosophy—Engineers' Case (1920) 28 C.L.R. at 147.

44. Engineers' Case (1920), 28 C.L.R. 129.

45. i.e. by the Judiciary (Amending) Act, 1907: See Part I of this chapter above.

46. J. G. Latham to the Commonwealth-State Ministerial Conference on Constitutional Issues, 1934: Report, p. 69.

47. James v. the Commonwealth (1936), A.C. 578. (This restored line of construction of Section 92 led later to the invalidation by the High Court of that part of the Airlines Act which purported to allow the Commonwealth to nationalize existing private commercial inter-State airlines.)

48. The change in and after 1920 had sprung from the High Court's decision in McArthur's Case, 28 C.L.R. 530.

49. H. S. Commager: "New York Times Book Review Supplement", February 17, 1946.

50. C. B. Swisher: *The Growth of Constitutional Power in the United States*, p. 38.

51. Parliamentary Debates, September 17, 1908: Andrew Fisher.

52. Higgins J.: Dissenting in Commonwealth v. McKay; Commonwealth v. Barger (1908), 6 C.L.R. at 116.

53. Royal Commission on the Constitution: Evidence, p. 765: Sir Edward Mitchell.

54. Commonwealth v. McKay; Commonwealth v. Barger (1908), 6 C.L.R. at 64.

55. The Case for Secession, Western Australia, 1934, p. 16.

56. Read v. Bishop of Lincoln (1892), A.C. 644 at 655.

57. Uniform Tax Case (1942), 65 C.L.R. 373 at 408.

58. See, for instance, Whybrow's Case (11 C.L.R. 311), the Municipalities Case (26 C.L.R. at 513), the Insurance and Bank Officials Case (33 C.L.R. 523), the Merchant Service Guild Case (15 C.L.R. 284) and Australian Tramway Employes' Case (18 C.L.R. 70).

59. Isaacs and Rich, J. J. in Insurance and Bank Officials' Case (1923), 33 C.L.R. at 524

60. Rich, J., in Australian Insurance Staffs v. Atlas Insurance Co. Ltd. (1931), 44 C.L.R. at 421.

61. Royal Commission on the Constitution: Evidence, p. 772: P. D. Phillips. See also Clive Teece: "Australian Law Journal", February, 1938, p. 398.

62. E. A. Beeroft: "The Control of Industry in a Federal System", "West Virginia Law Quarterly", April, 1935: Reprint, p. 14.

63. Dixon: Address to the American Bar Association, August 26, 1942, "Australian Law Journal", November, 1942.

64. Holmes: *Collected Legal Papers*, p. 230. See also the first page of his famous work *The Common Law*. (Holmes' own liberal and brilliant mind was active on the Supreme Court at Washington until his ninety-first year.)

65. Parliamentary Debates (Senate), April 10, 1946: Senator Donald Cameron.

66. Frankfurter, J. (dissenting): Gobitis' Case, 310 U.S. 586.

67. Stone J. (dissenting): United States v. Butler, 297 U.S. 78–79.

APPENDIX B

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[Note: 1. In the following index some attempt has been made to indicate after the names of most Australian political leaders and parliamentarians the principal offices which they attained in public life. These offices are indicated by capital letters, to which the following is the key:

A—Member of State Legislature.

B—Minister in State Cabinet.

C—Premier of his State.

D—Member of the Commonwealth House of Representatives.

E—Member of the Commonwealth Senate.

F—Member of the Commonwealth Cabinet.

G—Prime Minister of the Commonwealth.

H—Judge of the High Court.

I—Governor General.

J—Member of the First National Federal Convention, 1891.

K—Member of the Second National Federal Convention, 1897–8.

2. Page numbers given after the names of persons in this index indicate pages on which these persons are mentioned *or* quoted. Where a person is so quoted the page number given is that on which the quotation is given and *not* that on which the footnote appears. But where a *footnote* contains matters of substance other than the reference to a quotation in the text it is noted in this index.]

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