

NINETEENTH STUDENT SESSION AT THE ADMINISTRATIVE
STAFF COLLEGE, MT. ELIZA, VICTORIA
8TH MARCH, 1964

Speech by the Prime Minister, the Rt. Hon. Sir Robert Menzies

Mr. Chairman and Ladies and Gentlemen :

The other day, having let myself in for this, I was interviewed by Charles Booth and Ragnar Garrett and I said to them, "What do you want me to talk about, because everybody knows that businessmen know all about politics and that politicians know nothing about business. It seems to me to be an unfair distribution of virtue, but everybody understands that this is the case."

"But," I said, "there is one thing that I must say that most businessmen, and, I am almost prepared to think, most politicians, know nothing about and that is the true problems of running a federal system of government."

I thought I would like to talk to you a little about it because, make no mistake, however effective you become in business administration, you will constantly be barking your shin against problems of government - what government ought to do this - what government has the power over this matter; and what government has the power over another. This is a problem that bedevils the scene in Australia. It is very little studied. I wonder how many people who are here tonight have read the Commonwealth Constitution in the last ten years? Not too many. Not too many. I think they do a little more reading of the Constitution in the United States of America. I am not sure; I think they like to re-read the Declaration of Independence because there is a fine bravura quality about it somewhat detached from life but very exciting. In Great Britain they know nothing about Constitutions; they have none. They are in a magnificent position. "The Constitution of England," as the great French wit said, "Elle n'existe point". And it's true. Parliament has all power and may exercise it.

The United States of America has a Federal Constitution of an orthodox kind. So have we, not inconsiderably modelled on the American one. Canada has one of a rather different kind but still, it is a Federal system. South Africa has provinces as well as a Union, but it is not a federation of a country in which no problems of power in relation to the national government or the parliament can arise.

Well, the world goes on. In Great Britain - and I've told them this - I am not talking behind their backs; I made a powerful speech to them on this across the table at the last Prime Ministers' Conference. I told them: "I think you gentlemen have had an immense experience in writing federal constitutions - you know nothing about trying to make one work." And that's true, because in my own time, as in my current term as Prime Minister, I've seen a Federation established in the West Indies and I've seen it broken up. I've seen a Federation established, the Federation of Rhodesia and Nyasaland and a few months ago it was broken up. It resolved into its constituent parts. And it is only a few months ago, relatively, that we were all meeting about and discussing the Common Market - the European Common Market - and I was being told by very distinguished English statesmen: "Of course, we don't want to go into a European Federation; what we are contemplating is a kind of confederation", you see. I said to them, "Yes, I know the meaning of the words, but do you realise their implications?" I will say a little more about that in a moment. So you

see, here we are in Australia with a federal system - a federal system in which power is divided and divided according to a very precise specification in Section 51 of the Constitution, all the powers specified going to the Parliament of the Commonwealth, all the ones not mentioned remaining with the States, the sovereignty of Government belonging to the people of Australia and being exercised as to part, and as to the more important part, of reality by the Commonwealth Parliament and Government and as to the residue by the State Parliaments and State Governments.

Now that is a very simple definition of our system of federation. You will be surprised to know how little understood it is. It is certainly not understood at all by the people who were talking rather glibly about a European federation. As I say, I will come back to that because it is, I think, interesting. But let us stay on the home ground for a while.

Here we are, we have powers specifically given to the Commonwealth, enumerated, set out, you may read them all in Section 51 of the Constitution, and the ones that are not there belong to the States. Indeed, most of those that are there can be exercised by the States unless the Commonwealth exercises them, because few powers are exclusive to the Commonwealth like customs, bounties, excise, defence (for all practical purposes); these are powers given to the Commonwealth exclusively, but all the other powers or most of the other powers are concurrent powers. We have a power of taxation. Well, so have the States - not at the moment exercised, but not for constitutional reasons. There are a lot of concurrent powers, but the Constitution itself solved that problem by providing that where the Commonwealth exercised a power and made a law in a particular field which was a valid law, then any State law which was inconsistent went by the board. In other words, it established the paramountcy of Commonwealth law on items within Section 51 of the Constitution.

Now, I mention this to you because I think it ought to be compulsory reading for all people who aspire to debate these matters to read Section 51 with some care to see what powers are given to the Parliament of the nation. If you were in my place, you would go around Australia, you would receive representations, deputations of all kinds from people who say, "You know, we are coming to you with this, because this is a matter of great national importance. If it is a matter of national importance, then, of course, the Commonwealth ought to do something about it." And I say, "Well, I am sorry. Our Constitution doesn't say that the Commonwealth Parliament is to have power to pass laws about all matters of national importance. It has power to make laws about thirtyeight specified matters and no others." They say, "Oh, well, that is a legal quibble." Now, let's beware of this. This idea that you just make a good generalised statement that "this is of great national importance and therefore you fellows in the Commonwealth ought to be doing something about it", is not only stupid but disastrous. You know, I've been in small shires in Australia, small towns in Australia and have had the local worthies say to me, "Look, we must have a better water supply in this town. It is going to cost £150,000. It's of immense national importance. It will improve the health of this district and therefore make a contribution to the health of human beings in this nation and therefore to our capacity to defend it in the event of war." Now this is superb, isn't it? (Laughter) This is superb, this is the way to eliminate the Constitution and with it, eliminate all troubles. Of course, life is not like that, nor is the Constitution.

Now, this is worth thinking about. There is an awful lot of nonsense talked about the Federal system of

Government and a good deal talked in our country. Federalism, as a great writer once said, is legalism and we can't get away from it. If you are going to divide by a Constitution the powers of the national Parliament and the powers of State Parliaments, then it is quite clear that there must be somebody who will decide whether the boundaries have been overstepped. If you left it to the Commonwealth Parliament to say, "Well, in our opinion, our powers extend to passing this law," then we would have complete unification in Australia in a generation. Therefore there has to be an umpire and the umpire is the High Court, just as in the United States, the umpire is the Supreme Court of the United States. Its function, or one of its functions, and its most important function, is to pass on the validity of laws made by the Commonwealth or made by States in order that these constitutional boundaries shall not be overlapped. Now this is, I think, inevitable. It gives rise to all sorts of bitter arguments along lines like this: "What are these people doing? They are trying to control the progress of events." They're not. They are just trying to do their duty, just trying to exercise the judgment that they are bound to exercise as to the validity of some law made by some Parliament in Australia.

Now, our great-grandfathers or our grandfathers, as the case may be, who wrote the Constitution originally, did a remarkable piece of work. At this point I want to warn you against another fallacy. Every now and then, I am told by somebody - probably somebody engaged in State politics, and I was once myself - "You know, you are only here, you're only in existence, you the Commonwealth, because we, the States, created you. We made a bargain with each other and we conceded certain powers to you and kept the rest to ourselves. You beware." Well, that is, of course, unhappily untrue. The Constitution of Australia wasn't made by any of the six Colonial Parliaments at all. It was the product of a series of popular conventions which contained in some instances very well known members of State Parliaments but contained a great number more people who were, fortunately for us, well furnished with learning and scholarship on constitutional matters and they had a great deal of meeting and convention; they had two or three referenda in the nineties, and finally, the people of Australia voted for what some of the people of Australia - not any Colonial Parliament - had decided was a good thing. When the people had voted for it, off went the leaders of the Convention to London to present the new draft Constitution to the Government of the United Kingdom which then annexed the Constitution as a schedule to an Act of the Imperial Parliament, as it then was, and it became law. It became law in the short run because it was an Act of the Parliament of Great Britain. It became law, of course in substance, because it was the act of the people of Australia. It is well to have this in mind: The sovereignty was in the people; the sovereignty wasn't in six Colonial Parliaments, although each of them was a completely self-governing colony, like the Colony of Victoria.

Now I mention these facts to you because there is a fallacy which is constantly being promulgated here that you will come up against time after time and that is that Australia consists of six sovereign States. I hear this constantly - every time there is a Premiers' Conference. It will be one of the red-letter days in my life if each Premier doesn't at some stage utter this piece of nonsense: "Of course, you must remember, we are a sovereign State." So there are six sovereign States; I don't know where the Commonwealth comes in, because if we have six sovereign States what sovereignty is left for the nation. It's absurd. The sovereignty inures in the nation, in the people. Some of the sovereign powers are exercised by the Commonwealth Parliament and Government; some of the sovereign powers are

exercised by the State Parliaments and Governments. Don't let any of us be under any misapprehension about that matter. There is a division of sovereign powers and each of us exercises his bit of sovereignty within the limits of the Constitution of the nation.

I don't know how long it is since you gave yourself the pleasure of reading about the events that led up to the American Civil War, but they are very well worthwhile recalling in this field. When I was a boy, I thought the Civil War was about "Uncle Tom's Cabin" - you know, that sort of thing..... and the good man and the bad man and some little wretch being taken over the ice on the river. You know, it was a terrific affair, "Uncle Tom's Cabin", and people were brought up to believe that this was the whole outfit about which the American Civil War was fought. It wasn't. The Southern States in the United States took a very strong view that they weren't going to be dominated by what they regarded as the hard-faced professionals from the North and therefore they tended to be, in a very acute sense, "states righters", as we would say, and they would keep on saying, "But we are sovereign States." The very phrases were used.

And they had the view that if they didn't like what the North was doing - it might be on Negro emancipation, it might be on anything, and they didn't like it - then all they had to do was to secede because, being sovereign, they could exercise their own sovereignty by departing from the Union. You see? This was a very widely-held doctrine. This was the doctrine about which Lincoln conducted his famous debates and which he challenged and ultimately defeated. Are we all sovereign? May we secede? And the answer to that was: No. Your sovereignty is now merged in the sovereignty of the Federation. You are not able to secede. You can't restore your own sovereignty by your own act. This Federation is a compact which binds everybody, and therefore this is an indissoluble Federation. In our turn, we said so. You may see it in the preamble to the Commonwealth Constitution - "one indissoluble Federation".

But in America, it hadn't been so stated; but essentially, of course, if the Federation were to mean anything, to have any existence and any future in the world and any service to the people, it had to be indissoluble and that was what the Civil War was about - basically, that was what it was about.

A very great Englishman named Bryce who wrote what is still the classical book on American Federation - he wrote it back in the nineties, quite true, but he wrote it with full knowledge of all the events leading up to the Civil War - pointed out that what the Civil War really achieved was to settle this argument once and for all and to establish quite plainly that the sovereignty was the sovereignty of the nation and that no State was sovereign in the sense that it could conduct its own affairs to the point at which it seceded.

The State of Western Australia in a rather frolicsome moment - what, how many years ago? - had a Secession Movement. Well, it was good clean fun and, you know, it did no harm. They carried a referendum to secede from the Commonwealth and then the next time there was an amendment out to increase the powers of the Commonwealth Parliament, my good friends in Western Australia - and I admire them for it - voted for it. (Laughter) This is very satisfactory: Well, we would like to be out, but if we can't be out, we would like you boys to have

more power. The secessionists carried their case to the House of Lords. Well, it was quite hopeless. I was in London at that time and, really, there was nothing to argue about. It had long since been established that there is no sovereignty in that sense in some part of a federation, nor is there any right to secede from the total body. And it's important to remember that.

I recalled it, to my own satisfaction at any rate, when I was in London last year - or was it the year before? I've forgotten now - discussing the Common Market..... Now, of course, the Common Market argument ran high and hot and had a variety of aspects. I don't want to talk to you about the economic aspects of it because they have been canvassed to and fro all round the world. But one of the things that became involved in this was that I think at least five of the Continental countries were looking forward to having a European Federation. Le Grande Charles doesn't believe in it. (Laughter) He said with great vigour that this was to be an association of people, an association of States, but it was not to be a federation. And he was right from my point of view, as a matter of intellectual reasoning, to deliver his veto.

I've not the slightest doubt that he was right, and I tried to make this understood in London. I said, "You keep on telling me that you don't want to be in a federation but you want to be in a confederation - in other words, you want a fairly loose association of States but you want to have a few things established at the centre about which you agree - a common code on so-and-so, certain tariff rules which apply to everybody, a very considerable bureaucracy in the middle which deals with a mass of economic and sometimes legal and sometimes financial matters - this is what you want, and you think that that means that no problem of a federation arises, but I am bound to tell you this, or remind you of this, that there is no example in history, in modern history of a confederation which didn't either break up into its constituent parts or become a federation, with the consequent loss of sovereignty in the constituent members - I don't want to be too technical about it but this was vastly important.

The same Bryce pointed this out in words that are quite modern, sixty or seventy years ago, that in a federation itself there are two impulses going on - we see them in Australia. We've all seen them. Whether consciously or unconsciously, we all know a great deal about them. There is the centrifugal force tending to drive them apart - I haven't seen that operate so much in Australia - and the centripetal force that brings more and more centralisation of authority and centralisation of power, so that unless we all watch it, some day it will produce complete unification. And there is no escape from this. No confederation, no association of states in the history of the world ever stood still. It will become closer or it will become more remote.

We've seen it become more remote in the West Indies very quickly, so that there is no federation there at all today. We've seen this separatist idea, the centrifugal force, operate so swiftly in the case of the African countries that Nyasaland is now an independent country - Northern Rhodesia, Southern Rhodesia still have some vastly complex problems to deal with.

And in the case of Europe, this must have been the same thing. This puzzles me. I couldn't make them appreciate the fact that once they committed themselves to something that was organic, something that was structural in their relations with European countries, however valuable a lot of arrangements of a

practical kind, a pragmatic approach might be, that the moment they went in for anything structural, they would find that they were well on the move to having a European Federation.

Now, it may be a very good thing to have a European Federation. I don't sit in judgment on that matter. This is not my immediate business. All I want to say is that if there is a European Federation, Great Britain won't be a sovereign State any more than Victoria is in Australia for the reasons that I have given you. It will be a constituent member of a highly legal structure in which there is a division of sovereignty according to the rules set out in the agreement and therefore it would be, I thought, rather hard to have Great Britain as a non-sovereign state but as a member of the European Federation, coming along to have conferences with say, Ghana, as a fully self-governing state. Similarly with Pakistan, India, Australia, New Zealand Canada - and Great Britain the only non-sovereign body. It didn't appeal to me very much.

And of course the answer always was: But of course, that's the last thing we want and that's the last thing we are after. To which the reply had to be: But how do you know where you can stop the process, because if you establish what De Gaulle calls the "association of nations", "the society of nations", it will either become closer and begin to look awfully like a federation or it will grow more remote and Europe will go back into the old whirlpool of historical hostility. And do you know - let justice be done - the great De Gaulle..... it is always possible and in fact sometimes agreeable to disagree with him about this or that, and he is not one of the great constitutional scholars of the world, but he is a very great man - and he has seen with completely clear instinct that if he wants France to be a great powerful independent nation, restoring its glories in the Western world, he can't allow it to become a mere province in a larger organisation. He is quite happy about having Italy and the Benelux countries coming along and playing along, getting together for economic purposes, financial purposes - but for political purposes, for anything that will impair the sovereignty of France - no. In other words: I think he is one of the statesmen in Europe who has understood that the federal idea produces problems which can't be solved by a few casual remarks in an armchair, which have to be studied, which have to be experienced so that you not only know them in theory as I have had to know them as a lawyer, but as I have had to know them by touch, in having to deal with the particular problems that emerge.

You know, on the whole, I think that Australia has managed its federal system pretty well. I think there is a good deal of nonsense talked of a "states rights" kind. I have said something about that - that it is "flim flam" and by the way. But on the whole we happen to have managed the business in Australia by doing one or two sensible things, one of them quite illicit. Shall I tell you about the illicit one first? Yes. I knew that would have an instant appeal to you, you captains of industry. (Laughter)

Now here is a great continent in which all the highest concentration of development is down here in Victoria or over there in New South Wales or now, to an increasing extent, in the south of South Australia, yet also in which up North, where you have so many growing things, are the large beginnings of what will be an immensely larger mineral industry in all its forms. Northern development is more than a political cliché; it is something that represents one of the great problems in Australia. How can the people who live, and live well and prosperously in one relatively small section of Australia do something to increase a

development elsewhere? Now, you may say to me, "Well obviously something ought to be done, something ought to be done to give an incentive (that's the modern word) to people to go and adventure their capital in the north and go into these remote places and look for minerals and search for oil and do all these things, that are wonderful things for this country." And of course the incentive obviously is to make some discrimination in their income tax.

People say to me: "Why? Why don't you relieve of all tax people who are earning their income beyond a certain parallel in the country?" And I say, "A jolly good idea, but grandfather didn't think so." Because grandfather put into the Constitution a provision that no law may be made by the Commonwealth of taxation or briefly, of money, which discriminates between one State and another or between one part of a State and another. You can imagine the old gentlemen doing it, can't you? They sit down there. They've got six reluctant colonies who think that on the whole it wouldn't be a bad idea to have Federation. Not flogged into it by a war, as the United States was by the War of Independence but a conscious effort of reason and persuasion. But, at the same time, they were all colonies.

Down in Victoria, of course, we are the broadest-minded of people, and I am perfectly certain of their saying, "Well, of course, we are going to get mixed up with those scamps across the Murray; we must be very careful; we must preserve ourselves as far as we can. And you get some of these rather odd provisions in the Constitution about uniformity. It's uniformity mad. We are uniformity mad in Australia. Unless somebody gets exactly the same deal as somebody who lives 2,000 miles away, there is something wrong. This is awful nonsense.

This is a country which can be developed only by encouraging the unorthodox, by encouraging non-conformity, by encouraging inequality - I don't mean to the point of injustice for that is a different matter. But why should everything have to be ironed out in this fashion. But they did it, and therefore we cannot, by a taxation law, provide a rate of tax in Queensland, in the Commonwealth, which is not to apply equally all over Australia. And in legal truth - I don't want this to be used against me if it comes before the High Court, as it will no doubt - we can't apply a rate of taxation north of Townsville which is smaller than the rate of taxation south of Townsville, all other things being equal, because of this wonderful anti-discrimination provision in the Constitution. So all I can say is, that it was done by the Commonwealth - Zone A, Zone B - and there are many happy or unhappy taxpayers in the north of Western Australia, in the Northern Territory, in the north of Queensland who secure an advantage from this. All I want to say is, I think it is quite illegal. We have rested on the very comfortable proposition that nobody outside of an asylum is likely to challenge it. (Laughter)

But now, that is just a single example of what I am really getting at over this matter, in that I believe that a national Government could do far more for the development of these parts of Australia, crying aloud for development, if it had adequate powers of discrimination and were not bound by these rather antiquated ideas that you must have uniformity and that means that whatever the law is, it has to be the same at Weipa as it would be at Mount Gambier.

This is very foolish, looking at it with the eye of history and certainly foolish if one tries to look at it with anything like the eye of statesmanship. But I mention it to you

because a lot of people will say to you: Why don't they do so-and-so? Why don't they do something about it? Well, if they had had to sit down as frequently as I have had to do and say, "By Jove, I would like to do so-and-so. I think this is a splendid idea. How can we work this one out so as to dodge the Constitution?" This is a health-giving exercise. I don't have any objection to it. I think it is a highly moral undertaking, not immoral. After all, most people I think dodge as much income tax as they can and as long as it is within the law it is right, but it is a great pity. I think that more and more, as we go on, we will be thinking about our constitutional powers - not in relation to a lot of these matters that get discussed on political platforms, most of which I can assure you are completely trivial from the constitutional point of view - and trying to make a Federal system with its written Constitution flexible enough to serve the interests of a country that is growing at almost an explosive rate. This is the great problem of federal government. I've had a long experience of it. I've seen it from both sides. In a manner of speaking, I suppose I have got some expert knowledge on this matter and I still find it one of the most teasing things in the world.

I will just add one thing because time goes on. I have to be in Sydney tomorrow. We have a meeting next week of the Loan Council. The Loan Council consists of the State Treasurers who are usually the State Premiers and the Commonwealth Treasurer who is the Chairman, and I attend and by an act of grace on the part of the others who attend, I am allowed to speak when I want to. That is the Loan Council. The Loan Council was set up under the Financial Agreement and the Financial Agreement was authorised by one of the few amendments ever made to the Commonwealth Constitution. The Loan Council was established to do one thing, one thing only.

There had been great confusion up to that time - New South Wales was borrowing at $5\frac{1}{2}$ per cent. and some other State wanted to borrow at $4\frac{1}{2}$ per cent. Well, there was a great deal of conflict and competition in the markets and then if one State looked as if it might default, this affected the credit of the other States who wanted to raise money on the market. This became a terrible problem, particularly as we had one or two rather adventurous State Premiers in those days. And so the Financial Agreement was made and the Loan Council established. And the function of the Loan Council is to decide how much money can be borrowed for a public works programme, how much money can be borrowed at reasonable rates and conditions. That's all.

In the old days when the Loan Council decided that, the meeting adjourned with suitable compliments. When I was first a member of the Commonwealth Government, I was Attorney General. I used to attend the Loan Council meetings - I don't know in what capacity. Still there it was, and in looking back on it now, it is hilariously funny. This is back in 1935-6-7-8, you know, not all that long ago. The Commonwealth Bank used to underwrite the loan programme. And the Commonwealth would get from the States what their estimates were and their loan works programme. As a rule, it was about £19M. or £20M. for the whole lot and, metaphorically though not actually, the Commonwealth Bank sat with a Governor who was in the corner of the room and the Premiers would have a magnificent debate and beat it up by half a million. It might be £19½ then it must be £20M and then somebody got a run on and thought it ought to be £22M because his State wanted more and then the Prime Minister, Mr. Lyons, would say, "Well, let's adjourn for half an hour" and you would go around the corner, so to speak, and have a word and come back and say, "No, the

banks will underwrite £20½M." And £20½M. it was. And everybody went away. The money was in his pocket because it was underwritten by the central banks.

Well, of course, today we talk in programmes at Loan Council meetings of about £300M. and they are always too small, so I gather. But we don't sit down now and say how much money can be borrowed on reasonable rates and conditions because until the last two years that would have meant that we would have decided that the limit was £60M. or £70M. because that was about what the market would yield over a period of years - £80M. perhaps, sometimes a £100M. with a bit of luck, and we developed a new technique.

We, the Commonwealth want now to satisfy ourselves that in physical terms the performance of the loan works programme is a feasible one and if that comes out at £300M. and if our estimate of what the loan market will produce is £150M., then we have got into the habit of saying, "Well, we think you need this programme, we think that these works must be done for the purposes of economic development and we will therefore raise what we can on the market and we will supplement the market return out of the Commonwealth Budget. We will advance the money to you to make up the short fall." This honourable occupation, painful occupation, ran us up over a period of about ten years to something over £600 or £700M, and it is one of the beauties of a federal system that having done this, having either stepped up the taxation or jacked up the taxation in order to provide these vast sums of money, I was always able to attend something or other and hear my State colleagues denouncing the Commonwealth for its miserable attitude towards taxation and demanding that it be reduced. (Laughter) I don't know whether that's a warning to business managers in esse or a warning to politicians in posse (Laughter) but it applies equally to both. These are complex matters. I think that it is remarkable how far accommodation has been worked out so that the strict letter of the Constitution hasn't prevented certain really material economic development. That's one of them. The Loan Council business has been made to work for the good of Australia though it is quite different from the one which was established by constitutional authority. It is not illegal but it is a voluntary affair, and it works, and it works to the good of the people of Australia.

But don't let it be thought and don't let it be said that every problem which crops up in Australia is one which, because of its importance to somebody is one that belongs to the Federal Government or Parliament because I am a very great believer in the Federal system. I believe in the division of power. But you can't really be an understanding, intelligent, devoted federalist unless you know what the federal system is, unless you know that there is a division of power, that there are some things that a government may do - one government - and some things that it can't. And I think that if we increasingly clarify our minds on that, we will have less confusion, get rid of a lot of avoidable bad temper and irritation and sometimes hatred by realising that we are all the servants of the one sovereignty and of the one people, that each of us has his allotted task to do and ought to do it within the rules laid down for playing of the game.

Now, Sir, I have spoken too long. I am going to leave after a little while and go to bed and make a powerful speech, I hope, to the graziers in Sydney tomorrow. Therefore, I will shut up and sit down, but if anybody has a simple question that he thinks I can answer I will be glad to have a shot at it.
