COMMONWEALTH OF AUSTRALIA

SPEECH

BY

The Rt. Hon. SIR ROBERT MENZIES, K.T., C.H., Q.C., M.P.,

ON

CONSTITUTIONAL REVIEW

[*From the "Parliamentary Debates," 1st April* 1965]

Sir ROBERT MENZIES (Kooyong—Prime Minister) [11.41].—I hope that I will not disappoint either the Leader of the Opposition (Mr. Calwell) or anybody else in this House when I say that I have no intention whatever of making a party debating speech. The Leader of the Opposition did not do so either. I have no desire to do it because I agree that the issues of constitutional change ought not as a rule—and there may be some exceptions to this—to be settled or thought of in purely party terms. Indeed, I am able to say that I find myself in agreement with much of what the honorable gentleman has said. I think he is a little optimistic, if I may put it to him, when he asks that all sections of the report be placed before the people at a referendum without further delay, because he will agree with me that experience indicates that if that were to be done the whole lot would be lost. A great mass of proposals for constitutional change cannot be put before the people with any real expectation of getting them through. It has been tried and it has failed. The whole problem of constitutional change in our country is bedevilled by the fact that the disposition of the people is to say: "When in doubt, vote 'No'". The change suggested needs to be crystal clear. It needs to be one which does not lend itself to misinterpretation or to absurd fears which are occasionally promoted. These requirements are not easy to attain, but simplicity on a matter which really engages the public attention and to which the people will direct their minds thoughtfully is essential.

I do not propose to cover the whole field that the honorable gentleman has dealt with, and for one very good reason—I am not here to indulge in the luxury of offering a lot of personal views on a variety of matters. The Government has, in fact, under its immediate consideration two aspects of the reforms which have been indicated, and I think I can say something about those, but in relation to others I am not in a position at present to make any definitive statements of policy on behalf of the Government. When I can, of course I will, because I do not at all underestimate the importance of these matters. One of them, the question of the division of the Commonwealth into electorates, on which the report has made proposals which are supported by the honorable gentleman, will no doubt be the subject of discussion when we introduce electoral legislation, because some of the points he has made, particularly about differentials, will very legitimately then be open for discussion. I do not want to anticipate that, but I do want to say something which I do not think is at all controversial

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about two of these matters. I will start with the last one mentioned by the honorable member. With the proposition that section 127 should be repealed we entirely agree. When any referendum is instituted that most certainly must be one of the questions. It is completely out of harmony with experience and modern thinking and, indeed, with a great deal of our own legislation in this Parliament relating to Aborigines. The retention of the old fashioned provision in section 127 is quite out of harmony with the elevation of the Aborigines into the ranks of citizenship. But it has been customary, and the wish has been made clear in a number of petitions, to associate with the repeal of section 127 the removal of what has been called the "discriminatory provisions" of section 51. On that I would, with great respect, challenge the assumption that is made. May I read the provision to the House in order to refresh its memory. Section 51 states—

> The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:—
>
> (xxvi.) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:

It has been suggested that that provision discriminates against the Aborigines of Australia. I would have thought that the contrary was the fact. Parliament has been given power to make discriminatory laws in relation to the people of any race—special laws which would relate to them and not to other people; laws which would treat them as people who stood outside the normal grasp of the law, enjoying its benefits and sustaining its burdens in common with all other citizens. I would have thought that the perfect state of affairs in Australia would be that any Aboriginal citizen felt that he did stand equal with every other citizen before the law, enjoyed its benefits and took his own part on a proper basis in sustaining its burdens. I have no doubt whatever that this provision in the Constitution was designed having regard to conditions that existed at that time and the possibility of having to make a special law dealing with, for example, kanaka labourers—perhaps a special law to deport them from the country or to confine them to some particular area. There was a good deal of discussion about this at the time this provision was framed. Therefore the framers of the Constitution inserted this provision, but they left out the Aboriginal race because they did not want to discriminate against the people of the aboriginal race. All we have to do now is to cross out this reference "other than the aboriginal race" and we confer on this Parliament a power to make a special law which relates to the Aborigines and to no other people.

Mr. Reynolds.—But——

Sir ROBERT MENZIES.—If you do not mind I want to pursue this. I do not think it is at all out of place. There is a second point about it, and this does concern me. If the Commonwealth, as one of its heads of power under section 51, has the right to pass special laws with respect to the Aboriginal race, I wonder what limitations will be on that separate head of power. Would this enable the Parliament to set up a separate body of industrial laws relating to Aborigines or some other kind of law—health laws, quarantine laws or laws under any of the other powers of the Parliament? It may well be true that it could because, make no mistake about it, this would be a head of power standing not inferior to any other power contained in section 51. That is a matter that requires a great deal of thought. I do not want honorable members to think that I have arrived at some positive conclusion about it. I am raising it here in order to indicate that it wants a good deal of thought and that we would want to give it a great deal more investigation than we have before we favoured changing the provision in section 51. But we would be very happy to see the end of section 127.

The other matter about which I wanted to say something concerns section 24. The Leader of the Opposition has said most of it, and, if I may say so, very well and clearly. I do not want to subtract from what he has said. I just want to add a little to it. Section 24 of the Constitution is a puzzler. It reads—

> The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of senators.

I confess that I do not know what "as nearly as practicable" means. If it means mathematically practicable, then we must

have 120 members and that is the end of it. We have never had exactly twice as many members as senators that I can recall in the history of the Parliament, but we have been, in a sense near enough. Today we are a couple over that provision, with two other members full of hopes. I do not think anybody seriously thinks that there could be an effective challenge at law to the existing numbers. Nor, indeed, would I think that if we went to 123, 124 or 125 members we would necessarily violate the provision, because what is practicable involves consideration of hard facts other than mathematical considerations. Still, it would be a bold man who would think that we could make any sizeable addition to the numbers of the House without incurring the risk of running foul of section 24. The moment somebody indicates that somebody is thinking about increasing the number of members of the House we will get the orthodox complaint in some quarters that there are already too many members of Parliament. This is the cheapest cry in the world, but it is always produced. A good deal of unthinking criticism is put forward when any suggestion is made that the number of members be increased. I have read some of it in the last few days. It is quite unthinking.

It therefore becomes necessary that I should say what the Leader of the Opposition has already said. There is one single fact that cannot be ignored if section 24 and the little collection of sections stand as they are. Unless you are to have a perpetually deadlocked Senate, you cannot increase the numbers in the Senate except by 24. If you increase the total number of senators by 12 it will mean that at each election 6 senators are elected for each State. The result will be 3 elected on each side. There is the very definition of a perpetual deadlock. So if you are to have a Senate that is workable—an unworkable Senate would be a menace—you must increase the number of senators so that at each election each State will elect 7 senators. You will then have 4 on one side and 3 on the other. This means increasing the size of the Senate by 24. That would mean increasing the size of the House by 48 members.

Mr. Uren.—Too many.

Sir ROBERT MENZIES.—If they all were like my friend I would be quite happy, but nobody in this place at this time thinks it is necessary to increase the size of this House by 48 members. We may think it desirable to increase it by 10, 12 or 15 but not by 48. Such a proposition would not enter anybody's mind. Yet we are presented with a choice in which we will make either no increase in the numbers, an increase so nominal that it does not violate section 24, or a vast increase by increasing the size of the Senate by 24.

Mr. Duthie.—Why not wipe out 24?

Sir ROBERT MENZIES.—If my friend from Tasmania wants to have an argument about that, all I can say is that he ought first to take it on with Senator Wright. The point I am making is obvious enough to all honorable members, though I think it has been overlooked by some of the incipient critics. The point is that this House has a choice. It can either for all practical purposes keep its numbers static or find itself increasing the size of the Senate, under the existing law, so as to be able to increase the size of this House. In my view, it would then be compelled to increase the Senate by 24—nothing else would work—and be required to increase the size of this House by 48 or 46, whatever the figure may be. It cuts both ways. If the numbers are to be as nearly as practicable twice the number of the senators, the position would be that the number in this House would need to be as nearly as practicable 168. Nobody proposes that; nobody would think of it at this time.

I have said all this to show to the House that we adhere to the principle that is involved in that part of the report that says that the nexus ought to be broken. If it is not broken, there is no flexible future for this House. I have been reminded of my long experience in these fields. It is indeed long. I have been through a few referendum campaigns and I have come to respect the genius of the people for voting No. If we go to the people with a proposal to amend the Constitution to break the nexus between the two Houses, the first question that will be asked by those opposed to it—there will be quite a lot of people opposed to it, particularly in some States—will be: "You want this so that you can increase the size of the Parliament. By how much do you want to

increase the size of the House of Representatives?" That raises problems that do seriously require a great deal of thought. We would need to consider how these matters are to be presented and the extent to which we can go into details. We must be as forthcoming on those matters as we can. If we are not, we will be told that we are hiding something and the result will be disastrous from the point of view of ever increasing the size of this House. I am not at this stage proposing positively to give a programme for the Government on these matters. We must consider the various aspects. They are associated in the public mind with other matters concerning electoral laws and the spread of boundaries, which, as everybody knows, are matters of acute difference of opinion. As I have said, we will by suitable legislation give the House the opportunity for a debate and, therefore, decision on these matters.

When I rose this morning all I hoped to do was to raise one of two of the matters that I do think are worth considering and which have been exercising our minds quite a lot. I wished to emphasise—it is very desirable to emphasise this on constitutional matters—that I really believe there is a very substantial body of opinion in common in this House. The qualifications that I have put have not been so much qualifications of principle as of application in the matters I have dealt with.

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