THE THIRD COMMONWEALTH AND EMPIRE LAW CONFERENCE
SYDNEY, N.S.W.

24TH AUGUST, 1965

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

My Lords, Your Excellencies and Ladies and Gentlemen :

I think my task this morning is to declare this Conference open, but as I was once a lawyer, now a politician, it is obviously expected that I should make a speech with enough brevity to save the day for you.

I want to make two confessions at the outset. The first will be preceded by a statement. You see their lordships and their honours gathered here. They don't always appear in robes of that kind and when I walked in this morning, Mr. Kerr said to me, "All the judges have been to church" in a rather accusing way I thought, (Laughter) because I had been flying down from Canberra, and they had been to church - to which I made a reply which I want to repeat. I mentioned it to one or two of the judges outside and I had very little appreciation. I said, "Under those circumstances, I would have expected them to be in the odour of sanctity, but all I can smell is mothballs." (Laughter)

Now, Sir, as you have pointed out, this is not a political conference. We are here as lawyers and I am delighted to find myself in the company of so many lawyers because I confess to you that the law was my first love and remains my last. I have always regarded politics as a somewhat untimely interruption in my enjoyment of law.

So this isn't a political conference as you have said. It is a gathering of lawyers, and I venture to say it is a very timely event, particularly in this confused period of modern history where the rule of law and the institutions of the law are both under challenge. I begin by saying that because I think we ought to face up to that fact that there is a challenge to the law, a challenge to the institutions of the law. And I hope, Sir, that whatever vastly important matters of detail may be considered at this conference that the great principles will not be entirely forgotten.

Now I suppose most of us lawyers were brought up on A.V. Dicey and we know a little, in words, about his two great principles of the sovereignty of Parliament and the rule of law. Well, his principle of the sovereignty of Parliament I don't need to take very much time about because it is by no means of universal application. He was writing about Great Britain with no written Constitution and evolved position for the institution of government, and he was able to say, with substantial accuracy, that Parliament was all-powerful, was sovereign.

This is not, of course, wholly true in Australia. We have a written Constitution. That's an advantage that every lawyer here will appreciate. (Laughter) And under that written constitution, you have what might be called roughly a division of sovereignty between the Commonwealth and the States, and even then, as we all know, it is by no means complete, because as the Constitution now stands, there are certain things that can't be done either by the Commonwealth or the States. The immortal Section 92 of the Constitution has taken care of that, to give only one example.

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Therefore, Sir, the principle of the sovereignty of Parliament is not one that we can become eloquent about in after-dinner speeches when we are seeking to state what the elements are in common in the Commonwealth because that is not one of them. And I am not complaining about that. There are very many newly-independent countries in the world who don't, as yet, or there are some who don't as yet have a Parliament in our sense, or for that matter, of course, recognise its sovereignty. Parliament, and the authority of Parliament and the party system and the conflicts which precede the choice of a Parliament and the proceedings of Parliament, these are all rather peculiar to some countries, including our own in Australia, but not of universal validity, because whatever the sovereignty of Parliament does mean in any country, if it can be used as an expression at all, it must connote the authority of Parliament over the executive by its power to dismiss or to reject.

Well, Sir, put that on one side because I don't want to dwell on it. It is no longer a matter of common existence, it is no longer a common factor in all Commonwealth countries though I hope some day it will be.

What about the rule of law. I turn to that because to me - and I am sure to you - the rule of law is the vital element in a high civilisation, and we as lawyers, I venture to say, are bound in conscience to battle to establish it and to maintain it.

The rule of law has many aspects familiar to lawyers. They may not be too familiar to those who are not. But there are two aspects of the matter to which I, for one, attach immense importance. One is that there should be punishment or restraint of anybody only after ordinary proceedings before the ordinary courts, so that we all know that we are not going to be punished for something, we are not going to be put under physical restraint in relation to some matter unless we have gone or been taken before the courts, the ordinary courts, and there have applied to us the law which applies to all other people.

This is to be contrasted with arbitrary power. There are still symptoms of it in the world - preventive detention by the executive. This is, of course, the very antithesis of the rule of law.

The second aspect of it is involved in the first, that because of the rule of law no man is above the law - everybody in the country from the most highly-placed down to the most insignificant, if you care to put it that way, they are both under the law, not one of them above it; subject to the ordinary law and the ordinary tribunals.

Now, Sir, that is so important; it is a matter to which much attention still has to be directed in many countries of the world, but it is of prime importance and you notice that involved in it is the position of the courts and of the people. I just want to say this to you that the courts, the courts of law in this country, in any other country represented at this conference, must be authoritative and strong, and I just want to remind all barristers who are here that an authoritative and strong court requires a strong judge but it also requires strong advocacy. This is sometimes forgotten. In my own time, I have been some terrible performances of advocacy, apparently

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subconsciously based on the idea that the judge will have to decide it anyhow and that's his business. A weak barrister, an ill-prepared one or that utter curse, if I may say so, who either can't distinguish between a strong argument and a weak one or lacks the decision to select and concentrate, he is a curse that one. We've all heard him before today. He harms his client but he also harms the judge because the judge has not been given the assistance that every judge must look for when he knows that he has to determine an issue between the parties.

One other remark I would like to make to you because I have been warned to be brief. Lawyers, if I may say so to all of them, must avoid a narrow outlook. I don't mean to say chat I am asking people not to concentrate on the work in hand because I know that is the very essence of legal practice, but they are not to achieve a narrow outlook. It is a good thing to find time for thinking, for example, about the relations between the law and life in a cnanging world. The relations between law and life, the law not being something desiccated and detached, unrelated to the life of human beings - constantly to see it against a human background. And therefore, while remaining concerned with the interpretation of the law and its application - the application of the law to the facts - lawyers really should find time and and mental energy to influence law reform, for example, in substance as well as in procedure, and this is to be achieved, partly by professional action, and under some circumstances by political action.

I'll just add one word about political action. A well-furnished lawyer is a great asset in any Parliament and if he be a well-furnished lawyer, he will be listened to in any Parliament. If he can add to the techniques that he has acquired in court and in the study, a wider warmth and variety of human contacts - in other words, gets the feeling of politics and the sense of a Parliament, which is a peculiar place but rather the same all over the world; you must get the feel of it - if he can do this, that well-furnished lawyer, he can come to great prominence and influence and have his opportunity from time to time to do something about the reform of the law in the light of changing circumstances in a very rapidly changing world.

Sir, in my own time, in my thirty years in Canberra - it is hard to believe, looking at my boyish countenance that thirty-one years ago I was Attorney-General of Australia, and therefore I have had all that time since - and in that time there have been too few of the people that I have been describing, too few well-furnished lawyers coming into politics, not too many. It is a cheap cynicism that I always try to correct when I hear people saying, "Oh, there are too many lawyers in politics". Well, I suppose it may depend on how you define 'lawyer", but I started off by talking about somebody, the desirable person, a well-furnished lawyer. All I can say is that my own Parliament would be much better off if we had more than we have and it would be a disaster if we had less.

Now, that little homily.....I don't like making speeches before lunch and I daresay you don't like listening to them (Laughter) but there is no escape this time because here I am, and when I have heard a few more speeches that will be of very great interest to me, I must set about getting back to Canberra in time to be cross-examined at half-past two at Question Time, and so I declare this Conference open.