

THE PRIME MINISTER'S SPEECH AT THE LAUNCHING OF  
'THE AUSTRALIAN CONSTITUTION' BY GEOFFREY SAWYER  
ON MONDAY, 26TH MAY, 1975

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I suppose I have been brought in to launch this book to direct some attention to it and I'm very happy to fulfil that purpose. I'm certain that anybody looking at the book will find it interesting. It will be accessible to a degree that very few books can be accessible because it is being published by the Australian Government Publishing Service and it will be available at all its outlets. It will not only be accessible, it will be stimulating.

Geoffrey Sawyer is one of the most scintillating of our academics. I was first exposed to him getting on in the middle '50's, when I was sitting on the Constitution Review Committee of the Federal Parliament - both Houses, both sides of each House. There were very many distinguished witnesses who gave their views and the one whose views I remember most dazzlingly, was Geoffrey Sawyer.

There are a great number of academics these days who write for the newspapers and particularly for the Fairfax press. It's no compliment to say that Geoffrey Sawyer is the best. Some of the others are fallible in proportion to their dogmatism. I've never known professors to be so unflinchingly in error. But Geoffrey Sawyer is better than most. He is certainly as good as any. This is not patronising. One has to remember that judges don't agree and their word is final. How many unanimous decisions do you get from the High Court? In recent years we have learnt how the Privy Council, of course, wasn't unanimous always. A lot of things must have been decided by majority. So if judges can disagree, there is no shame in academics also disagreeing and being wrong because the judge is only right if he is in the majority. For all that, this book will be accessible, it will be stimulating.

The important thing is that we should encourage people to know the framework within which all the Australian Parliaments have to operate. We are one of the very few federal systems in the world and we are the most litigious of them all. There is West Germany, United States, Canada and Australia. There are other federal systems, India, Mexico and Brazil and so on, but one never really finds there the constitutional contests in the courts such as you find in the three English speaking federations and you don't find them in West Germany either.

I wish people would read the Constitution and see what it says. I've had some people in the States just blowing their heads, they are just beside themselves with outrage when anybody suggests that perhaps we should take some responsibility for seeing that there is a trafficable road between Sydney and Melbourne. That's always been in the Constitution - trade and commerce between the States. True, at the time the thing was written there weren't motor-cars and people, of course,

wouldn't go the whole of that distance in a horse and dray, but there are roads now and people do travel between Sydney and Melbourne, but they can't do it on the road provided. Now what is unreasonable in using the trade and commerce among the States - it's perfectly feasible, right from the beginning.

Again, I wish they'd read what is said about hospitals. It was regarded as utterly outrageous, provocative and irresponsible for me to suggest that if in large centres of population, such as outer suburbs, which of course have larger populations than any country towns, any provincial centres except Newcastle, that if they haven't got hospitals provided by the States, then the Australian Government could provide the hospital. This was absolutely unheard of but since 1946 we have always been able to provide medical services.

As it turned out, they disturbed themselves in the States and they have now laid a few foundation stones. But I just give you those practical examples. People do want to travel between Sydney and Melbourne by road, people do want to have hospitals near where they live, or are injured or are confined. If the roads or the hospitals are not adequate, there's nothing to say that the Federal Government shouldn't provide them.

One of the things which distresses me, of course, is how negatively people regard these things. I don't mind the limitations in the Federal Constitution on federal action in terms of civil liberties or human rights, such as they are there. I think it is monstrous that the provision providing for jury trial has been by-passed by a shabby dodge but, nevertheless, it meant well - jury trial for serious crimes. And again, acquisition of property on just terms. I don't cavil at those at all, but nobody ever seems to think - why shouldn't the same things be applied to the States in the Constitution? We had a Constitutional convention about 18 months ago, and out of its deliberations people suggest that there should be acquisition on just terms provided in the territories. Of course there should be. Nobody seemed to think there should be in the States too. What's the use of having a safeguard like that which is applied only partially. It should be made universal. Defective as the safeguard of jury trial is under federal criminal law, it should be tidied up but it should also apply no less to State criminal laws. I wish people would look at these things in a more basic way, in a less conservative, restrictive and negative way.

Of course, the constitutional provisions are always taking on new aspects. It's happened only a year ago. For the first time there was a double dissolution on several Bills. The previous double dissolution had been on a single Bill. We had them on six Bills. The current rate is over a dozen.

For the first time after a double dissolution, the Bills had to be rejected a third time so there was a joint sitting, the first that ever had been. For the first time, last May, there were some referendums on another provision of the Constitution which said that if the Senate twice rejected referendums, then Bills, then they could be put to the people willy-nilly. The Senate can prevent a Bill being passed but it cannot prevent a referendum being put. Of course, the Constitution is always taking new forms.

I want to pay tribute to the High Court and the way it has developed it. It has done much more than the people ever have at referendums. I was referring to the Constitution Review Committee report in the late '50's. An amazing degree of unanimity was reached there. There were never any of our recommendations which were supported by fewer than 11 of the 12 members. Most of them were unanimous. It's only last year that it was found that there were objectionable features about some of them. But in the meantime, some of the provisions in our report have come about. We were much agitated about the limitations of the National Parliament's power over civil aviation. Under the external affairs power, we now have it, coupled with the import power. No, the Federal Parliament doesn't need to amplify its civil aviation powers now - it's got them. Again, we were concerned about television which, naturally, was not contemplated in 1900 when the Constitution was drawn up. Nobody worries that we haven't in the Federal Parliament, now got jurisdiction over television. We were agitated about trade practices. In the light of the concrete pipes case, the corporation's power, we can effectively deal with trade practices. So, one way or another, things develop.

I do urge that people should read the Constitution. A lot of people think that if something is not used, that there's something improper about it. Take the Interstate Commission - an eminently reasonable body. But because it hadn't been used for over half a century, people think that there must be something improper about bringing it to pass. In the United States, they would never think of abandoning it. In West Germany and Canada, they now have similar bodies. And so one could go on. But I wish people would just be rational enough to look at the Constitution; not just look at it in a restrictive and negative, a cussed way, but to see what can be done if it is necessary or desirable or preferable to do something. There are very considerable shortcomings in it. A great amount can be done by cooperation between the Federal and State bodies, but at least one needs to be clear where each of them stands under the Constitution.

While I'm immensely flattered by what the Minister has said about me, I suppose in many ways, all I can claim is that I brought a lot of these matters to a head. I've made the Parliament face up to them. I've made the State Parliaments and Governments face up to them and I am trying to exercise them internationally as well.

One of the most fascinating things about this book of Geoffrey Sawyer's is that it makes the whole subject live in human and political terms. I naturally regard political terms as essentially human. That may have an element of rationalisation about it. But, the Constitution was, in terms of British colonies at the end of last century, a very bold initiative. Most of the other Federal Constitutions in the world have come about as a result of external pressures. That was the case in America, in Canada and West Germany. They have arisen from successful national liberation movements or unsuccessful wars and the newly emancipated colonists have resorted to federal systems or the banquished have resorted to federal systems or had them imposed upon them. We did it, largely, voluntarily. While I suppose you can say in retrospect, the horizons were those of colonial politicians at the time, yet nevertheless, there can be no doubt of the vigour of the debate which took place. Of course the book is well illustrated. The next edition ought to be still better illustrated, with some of these fascinating cartoons here. It's one form of art or controversy in which Australians have always been innovative and excellent. But between us, the Australian Government Publishing Service, Geoffrey Sawyer and the current Government, I suppose constitutional matters will continue to be exciting for quite some time. There can be no question that the public is more interested in politics than it has been for 40 or 50 years. The 1920's or 1930 was the last time that there was the interest in politics in Australia that there is at the moment.

If you are to understand Australian politics, you have to have some acquaintance with the Australian Constitution. With a scintillating author and a pretty good lawyer, we now have the material readily accessible and I'm certain people of all ages and all conditions, will be better and wiser through reading 'The Australian Constitution' written by Geoffrey Sawyer and published by the Australian Government Publishing Service. I'm very happy now to launch it.

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