

Appendix I

Addresses Launching Upholding the Australian Constitution, Volume 1

3. The Rt. Hon. Sir Paul Hasluck

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It is a privilege to be able to join fellow members of The Samuel Griffith Society today for the launching of this book. The volume contains the text of the proceedings of the inaugural conference in Melbourne last July. The chapters come from a wide and diverse range of contributors, drawing on many levels of experience in public affairs and the study of public questions.

The inaugural conference, this publication and the notable gathering in Perth tonight make a clear declaration of the chief purpose of the Society, namely to ensure that the debate on the Constitution of the Australian Commonwealth should be an intelligent debate, and that any changes that may have to be made to our Constitution should only be made after the widest range of thought and opinion has been canvassed.

I myself have a conservative approach to revision of the Constitution, for I believe that the basic purpose of having a Constitution and for giving a Constitution one shape or another is simply the better government of Australia. A Constitution is not just a piece of draftsmanship, but an agreement about working together for a common purpose and practical arrangements for the government of Australia. A good foundation needs stability.

It may seem very arrogant for me to say on an occasion such as this, and in the presence of a gathering as learned as this, that I personally feel that I have two great advantages whenever I enter on a general discussion of the Australian Constitution. Firstly, I have not been trained to the profession of the law. Secondly, I have always been much more deeply interested in Australian government than in the practice of Australian politics. I hope that you will see those words simply as a valid claim that I join in discussion about the Constitution with fewer inhibitions than does the text-book lawyer or the party politician.

The outcome of the first advantage I claim for myself is that I think of the Australian Constitution as more than the written text drawn up in 1901 and I see discussion of the Constitution as wider than argument about the interpretation of that text.

The second advantage is that I do not read the Constitution as a political manifesto or a statement of political objectives. Rather I regard the Australian Constitution, in the widest sense of the term, as the accepted and established description – and I use the word "description" knowingly as a word that will not satisfy any good lawyer – of a system and structure of government, of the institutions by which government is conducted, of the relationship between those institutions, and the distribution of powers and functions between them. It is a description of the accepted arrangements by which public affairs can best be transacted – a man-made set of arrangements for handling better, day-by-day, those matters that arise in the government of a nation-state.

Now, of course this certainly does not mean that I ignore or even disregard in the slightest degree the fact that the text of a written Constitution of the Commonwealth of Australia exists, nor fail in reverence for the text. I see that text primarily as the outcome of an agreement between six self-governing colonies to federate in order to form the Commonwealth of Australia in 1901, and to achieve the ideal of one people living together in one continent. Perhaps the briefest way to summarise this view is that I rely on the text for settling questions of function and powers, but

look beyond it for the discussion of purposes and principles (or the immediate tasks) of Australian government.

At the time they agreed to federate, the Australian States were singularly blessed by the fact that there was no dispute or doubt about our territorial boundaries or our origins, and consequently our territorial integrity and sovereignty were unquestioned. The ethnic, social and linguistic similarities (almost the homogeneity) of the population gave us ground for the slogan of one people for one continent. Before the point of time when the colonies agreed to federate, there was a history of the development by each of them of the structure of government, the growth of political institutions, and the usages of political adjustment and compromise. Earlier than that there was an inheritance from centuries of change in the British Isles.

I count it to have been my good fortune to have come up through the Australian education system during a period when the teaching of history in school and university led me progressively through the study of the way our modern political institutions were developed and the law and custom of the Constitution took shape. Consequently the Australian Constitution of 1901, shining and virginal in the halo of infancy, was for me the culmination of a constitutional history, both in the Mother Country and in each of the colonies. The ideas, experiences and practices derived from that history were just as much part of our Constitution as the text.

Again speaking rather arrogantly – or what is worse rather snobbishly – I regret that, so often in public discussion about constitutional reform in Australia, so many eager political practitioners take the floor assertively only to reveal that they do not know any constitutional history, have scant understanding of modern political institutions, and see the machinery of government in the same way as they see a motor vehicle to which they have been given sole possession of the ignition key. For the same reasons, whenever reform is in the air, we always see an untidy and eager swarm of amateurs who crowd the opening sessions of any Constitutional Convention, each with his pockets bulging with the complete draft of a wholly new Australian Constitution, to be tabled as soon as he has been able to throw the old one into the waste paper basket.

I shall turn now from expression of my prejudices to another theme. This theme is that the Constitution of 1901 has shown a remarkable quality of being able to encompass and to prove workable in a succession of great changes in the course of the past century. If the history of that century yields a lesson it is not that our nation needs a more elaborate constitutional text so much as it needs political wisdom, clearer understanding of where our interests as a people and a nation lie, and above all more of that singular talent for working together (with some forbearance for each other's shortcomings as well as a zeal for serving the common good) that is the characteristic of good government in a parliamentary democracy.

Perhaps you will allow me to give a personal touch to a quick cursory survey of the century of change through which I have lived. It is just seventy-five years ago – almost to the day – that I was in the last year of primary school, waiting to sit for the annual scholarship examination. It was November, 1917 and we were celebrating the opening of what was called the Trans-Continental Railway. We were told that part of the "promise" that had been made to Sir John Forrest at the time of Federation had now been honoured. The east and the west were linked by rail. Each child was given a souvenir of the memorable event.

Already in 1917 the waging of the war, and especially the story of the Gallipoli landing, had given schoolboys of those days a new and livelier sense of an Australian patriotism larger than our local pride in our own sand patch. At Gallipoli Australia had gained a proud identity.

Then, in the early post-war years, when I was at secondary school, the aeroplane flew into our daily life. The first airline in Australia was opened on the western coast. Qantas followed in Queensland. The first great intercontinental flights, both in the northern hemisphere and from Europe towards Australia and then across the Pacific, made the front pages. The importance of

civil aviation, both commercially and socially inside Australia, appeared almost as naturally as the dawn. Where do we build the airfields? Who runs them? Who regulates the industry? Then wireless telegraphy came into vogue and we had what were then "wireless" stations to tell us the news.

During the same period the early post-war development was marked by the promotion of migration, extensive overseas borrowing and land settlement schemes. We young men were emerging from secondary school into a land of opportunity in the early nineteen-twenties. Railways were thrusting into an undeveloped interior.

During the same period some of us were introduced to international affairs by occasional enthusiasts in University circles. We became aware of the international status of Australia as a member of the League of Nations, a mandatory power in the Territory of New Guinea and the phosphate islands in the Pacific, and as signatory at Versailles. In a vaguer way, our country, following mainly a Canadian lead after the Chanak crisis, had gradually moved into something known as Dominion status – a sort of certificate which Australia treasured but seldom used in asserting our place in the world at that time and our future links with the Mother Country and the surviving parts of the Old Empire. Our Prime Ministers still went regularly to Imperial Conferences.

During this period in the thirties Australians thought seriously of many emerging problems at home. There was the Giblin–Copland–Brigden–Dyason inquiry into the effect on our economy of the Australian Tariff; the Peden Royal Commission into the Constitution; the setting up of the State Grants Commission to iron out the inequalities between the States. Australian governments moved into interstate discussion and sometimes agreement. The financial agreements and new arrangements for tax collecting were arranged. Transport was seen as an Australia-wide problem. Overseas borrowing was coordinated. Industrial relations became more than a matter that could be handled separately and also required interstate consultations.

Then came the economic depression with its political, social and economic effects both in the life of the community and in the management of public affairs. We realised painfully that we were not fully masters of our own fate. We were subject to what happened elsewhere – in the mood of the times many Australians would have said we were victims of what happened elsewhere – and we had to make painful adjustments. Trade transfer policy, Empire preferences, overseas debt, massive unemployment at home – all these put a different aspect on government. The young Commonwealth of Australia, still only in the early thirties of its age, was being obliged to face the realities of being a self-governing dominion and no longer a favoured colony in a great Empire.

War came in 1939. The theme I am developing simplifies at this point. For the waging of a total war, the defence powers of the Australian Constitution meant that a single purpose could be served by a single authority. Functions and powers matched each other. Government centralised, and the fact that a task needed to be done virtually meant that under the defence power the due authority had the power to do it.

In the course of the war a change of government brought the Labor Party into office. It would be a fair historical judgment to say that, at this period in the history of the Labor Party, centralised government was itself seen as a desirable goal. For many of its members, the key word in debate about the future Constitution was "unification". Furthermore, from a variety of sources and influences, an influential element in the Labor Party had become doctrinaire socialist. They not only saw centralised power as a desirable form of government, but also saw their temporary possession of office and centralised power as the method to make changes towards a planned socialist state.

You will recall that, apart from the natural wartime transformation which I have recounted, Dr Evatt was active, first to promote the 14 powers referendum to increase Federal powers, but also to promote the concept that the external affairs power of the Commonwealth meant that when Australia entered into international agreements, the commitments it made as a nation endowed the Federal Government with power to give effect to them.

The referendum lost, but the purpose of a stronger central government and the socialist objective remained until the reversal at the general election of December, 1949. Some of you may recall that some of the wartime controls remained until the eve of that election, and that issues such as the nationalisation of banking and medicine (just to mention two examples) were prominent in the campaigning.

Under the demands of total war, uniform tax had been accepted as a necessary measure, and Federal domination in finance had been established.

During the war, necessarily more and more talent was drawn into the service of the centralised government. Some of the best men in the public service of the States, in private industry, in academic studies, and in various forms of management and technical expertness were serving the nation in new capacities. For the most part, each had a precise job to do and no need to hesitate about having power to do it. Towards the end of hostilities, the work of government became focussed more and more on the allocation of manpower, the distribution of a due share in resources to one activity in preference to another, the choice of one venture or the meeting of one prospective need in preference to another.

Both as part of the necessities of wartime and as part of the occupational interest of those engaged in administration, we moved steadily into a routine where someone with undoubted authority and possessed of undoubted power decided what should be done. It was great fun to be able to move people around. Alongside them, enthusiasts for a new order were moving confidently towards a planned society. Post-war reconstruction was both the name of a government department and a political objective. This was a fascinating period in Australian history. As one who was in the midst of it and who has written inadequately about it in the Official War History, I hope more critical studies of it will be made.

Then, at the election of December 1949, there was a change. Doctrinaire socialism had a setback, prospects for nationalisation were rejected, the ideas about a planned economy and a planned society had to be adjusted. Wartime centralised government gave way to the usages of peacetime.

At this point I shall repeat what I have written in other places. One of the great services which Menzies did for Australia in the years following the 1949 election was the restoration of the orthodoxy of Australian government, both in respect of the place and the functioning of the public service and the relationship between the Ministers and the public service. I rate this as one of his greatest achievements. He brought good order back into the processes of government, restored the public service to its traditional honoured place in the executive as a career service, and paid constant scrupulous respect to Parliament. We who had been reading Dicey as students in the nineteen-thirties were recalled to his principles in the nineteen-fifties.

Thus we entered on the second half of the century of the Australian Commonwealth in fairly good constitutional shape, and certainly with the foundations still firm.

Now here we are forty years later, looking beyond 1992 towards the next century. Drawing on an old man's memory of the passing decades, I suggest that the changes in the second half of the century have been more varied, deeper and less readily comprehensible than those in the first half. Personally, I can scarcely recognise in Australia today many of those characteristics which I thought were native to Australia in 1950.

In the field of domestic politics I suggest that in the nineteen-fifties Australia returned to the traditional lines of Australian development both as regards objectives and methods. There was still a major task to be done in transformation from wartime to peacetime; re-location of population, training and occupation for those who were demobilised from one form or another of wartime activity, restoration of trade and industry to a peacetime pattern with opportunity for private enterprise, the review and cancelling of unnecessary controls, regulations and restrictions. There was a great back-log of need for housing, services and utilities, and deficiencies in such areas as the post-office, telephone service, public transport and power for industry.

At the same time, and linked with these demands, was a planned promotion of immigration, including acceptance of an obligation in respect of wartime refugees and displaced persons, mainly from Europe. That period of planned immigration also saw the promotion of some major public works and a careful annual budgeting of the intake of migrants. Special measures were taken to assist the assimilation of the newcomers to the Australian way of life. Good neighbour councils, classes for the teaching of English, and organisation of welfare were encouraged to help New Australians find an easier way to acceptance and opportunity.

This is not the place for an evaluation of that period of immigration but, looking at Australia thirty or forty years later, I suggest that in all walks of Australian life today – in trade, industry, science, academic life, technology – and social advancement, one sees many outstanding citizens who as New Australians in the nineteen-fifties found that this was once again a land of opportunity.

Other features of the earlier post-war period were the building throughout Australia of educational facilities, health services and a wide range of activities and benefits embraced by the term social welfare. The scope of public aid widened considerably. As I have already suggested, this was done mostly along traditional lines. Access to higher education was more open. Notably, in both education and health (as also in fields such as transport), the improvement meant Federal-State cooperation.

During the same two decades of the fifties and sixties we faced new problems in the economy. I suggest our approach to them in the Menzies era might be described as orthodox both in policy and in administration. Soon after the political changes in 1949, there was a draining away of the various "think tanks" which had been making paper plans in various back rooms of government. Happily for many of the persons concerned, the post-war expansion of tertiary education gave them opportunity to work usefully at a new desk, or should I say from a more elevated academic pulpit.

The Treasury resumed its strong and central role both in economic analysis and the shaping of the Budget. Three points in the current orthodoxy were: watch the level of employment and keep unemployment below 2 per cent of the workforce; watch the overseas balances and the terms of trade; and, thirdly, check inflation. The phrase which Menzies repeated again and again to his Cabinet was: "We are walking the knife-edge of inflation". So public expenditure was rigorously examined in detail each year after a decision whether the economic outlook allowed a balanced budget or the financing of a deficit. In the legends of the period many little wizards were credited with being those who ruled in the darker recesses of government, but my own testimony is that this was a period of strong Treasury influence, with Menzies himself the upholder of the three objectives I have listed and respect for Treasury advice.

Later we had to face problems set by changes in world markets and in the opportunities for Australian trade. It is not immediately relevant to my theme to discuss other aspects of our economic problems, and particularly the new post-war situation in respect of overseas trade, investment, access to markets and the relationship of these world-wide factors (mostly beyond our national control) to any policy or development of our physical resources or the use of our

technological and managerial capacity. Nor will I discuss strange aberrations of recent years which seem to an old fogey like myself to have landed Australia in an unholy mess. The only rather sour comment I make is that I cannot understand how it was that private greed and personal profit seemed for a period to take front place in shaping national economic policy, and why so many excursions were made by governments in areas that might well have been left alone. Perhaps it was the fortuitous circumstances that a mineral boom, exploiting idle resources which we had done nothing to create, left some statesmen blinking in the glare.

In this quick cursory review of a century I have drawn on my memories, for I am writing this address in the temporary isolation of a place where the only document I have on file is the daily chart recording my pulse beats. My only purpose has been to support the propositions that Australia has undergone great changes during the century; that Australia today is a nation–state vastly different from the collection of colonies that federated in 1901; that the issues we faced and the policies which we had to shape throughout the century were perpetually changing; and above all else, that the future will be much more brutally challenging to us than the past. Through all this, it is not the Constitution that hampered us in the handling of public affairs or prevented governments from working together. To sum up, the lesson is not that we can only prosper if we write a new text or make major amendments to the old one, but rather that we need higher political skill and forbearance in using our Constitution.

Late in the nineteen sixties an amendment to the Constitution was made of the power to make laws in respect of Aborigines. I would doubt myself whether this was a well– considered judgment of the Australian people on the constitutional question alone. Rather it was an expression of opinion that we should do more to help the Aborigines and to redress the wrongs they had suffered. I would also suggest that the eventual historical judgment on whether it was either a necessary or a wise decision will be made on what has happened to the Aborigines since that redistribution of powers. Now, in the early nineties, are the prospects for the future of Aborigines and for the Australian nation better than they were in the early seventies? The amendment to the Constitution certainly does not appear to me to mean or (in the new language of the interpreters of the Constitution) to imply that there shall be two systems of law in Australia, or two different classes of Australians.

As I have indicated at the beginning of my rapid summary of the changes taking place in Australia during the century, my theme is simply that the Constitution gave a sound basic structure, system of government and the political institutions for handling the changes. It proved sufficiently adaptable to meet the changing needs of an emerging and evolving nation. Our Constitution is not an outworn obstacle to political wisdom or administrative skill. Perhaps the shortest way to summarise my view is that I can see no strength in arguments that we need a new Constitution, or a new system of government, even if there are very strong arguments for the need for some adjustments to meet changes in Australian needs.

In conclusion, may I be permitted to make remarks about the contemporary scene and the future. On the future I shall be brief, for I have no claim to be a prophet. It should be clear, however, that we are moving into an era where world affairs will be vastly different from that period since the French Revolution during which the nation–state emerged and old Empires crumbled. How long will the nation–state continue as a significant unit in decision making, both as regards what happens inside the borders of each nation and in its dealings with other nation–states? Already many of the nations which assert both their nationalism and their independence are not in fact masters of all they do, but are subordinate, either as mendicants or clients to other powers. Already some of the more significant nations are grouping protectively. Are we likely to be moving into a new era of economic imperialism, in which many fatal decisions on whether a

nation–state survives or prospers, or in brief terms what it can do as a nation, are not left in its own hands?

I pose that question starkly, for it may present the ultimate test of the wisdom of what we are doing in Australia in the few remaining years of our first century as a nation–state. The journalists sometimes put it even more crudely by asking of the future: Who owns Australia? How do we service our growing overseas debt? Who controls further investment in development? Where does opportunity lie in a continent that we once called the land of opportunity?

For the time being, however, we are still a nation–state trying to be our independent self in a world of nation–states. Survival, independence, and integrity, and our own identity as Australia are still, I assume, national aims. If so we need to cherish more than a hope that it will be so. A nation–state needs cohesion, a single clear focus of loyalty, and a rallying point of patriotism that supersedes sectional advantage. As a community of people living together, we have room for a wide diversity of interests, customs, creeds and styles of living, but as a society, organised as a nation–state, cohesion, a single loyalty and a body of law applying equally to all citizens, and respect for one government under the rule of law seem to be essential. In my gloomier moments I fear that in Australia today these essential qualities are being eroded – sometimes by design, mostly by carelessness and often by thoughtless blather about whatever happens to be the latest buzz–word.

I turn from these doubts to matters more directly related to our Constitution.

The matter that chiefly causes me concern is the pretension of the executive to be the source of power rather than the custodian of power. This is shown frequently in the relationship between the executive and the legislature and also in the daily usages of political life. Having obtained a majority of votes at an election, a party thinks of itself as gaining office, having a mandate to govern, and having won a victory at the polls. They think of themselves as being "in control". I would not go quite as far as the eminent British statesman, Hailsham, did recently when he referred to the office of Prime Minister as an "elective dictatorship", but we have had some indications in recent Australian history that Prime Ministers (and State Premiers more so) think of themselves in that way. They act as though their role was to control Parliament rather than being answerable to it.

Alongside this tendency there has been a weakening and in some cases total disregard of the unwritten conventions of our Constitution. A convention is a code of proper behaviour, something like the good manners of politics. For example, a Minister resigned if he was found to have misled Parliament; in the process of the introduction and passage of all stages of a Bill, and transmission from one Chamber to another, sufficient time was allowed for debate; question time was an opportunity to obtain information, and not to have another Donnybrook brawl. Convention requires recognition and respect of the place in a bicameral system of each Chamber. An old convention was that the Executive made its Ministerial statements and announcements to Parliament. Some recent incidents suggest that the Executive finds the National Press Club in Canberra a better forum and, moreover, I cannot recall any recent instances where the Press Club has been called as many dirty names as the Senate gets from the Prime Minister. Respect for the conventions as well as the text of the Constitution is a basic requirement of parliamentary democracy.

Another matter of concern is the damage done to the career public service, and the deterioration of the role of the public service in the whole business of governing. The lower and middle ranks of the public service provide the routine day–by–day transaction of public business in a similar way to the management and staff of any great multi–faceted organisation, and it is good for Australia that they do it efficiently, promptly and in an even–handed way. The top levels of the

public service come close to the apex of decision-making and giving effect to decisions. They have a professionalism in their own fields, from training, depth of experience, technical skill and total commitment, similar to the professionalism on which we depend in a surgeon, scientist, engineer. These qualities require a career service that is a-political, independent and not beholden to parties or persons for favour.

I see signs in recent years that the public service in Australia, both Federal and State, is not understood and used as well as it should be by those who are temporarily in office as Ministers, and that the value of their services in advice, decision making and administration in the daily processes of government is being lost. Part of the trouble is that new Ministers are a bit frightened of public servants because they are better than the Minister himself. They talk of them as bureaucrats. The only reason to fear bureaucracy is when Ministers are not competent, diligent and intelligent enough to evaluate truly the information and advice they receive and to act responsibly and decisively as Ministers.

Alongside the deterioration of the part of the public service in government we have seen the growth in recent years in the personal offices of successive Prime Ministers of something resembling a presidential bureau, with consultants, advisers, special advisers, personal assistants, speech writers, the occasional tycoon and much else, all beholden to the Prime Minister himself. One of these days, if ever Parliament revives a memory of Stuart days and challenges the divine right of Prime Ministers, it will find its Laud, Stafford and Buckingham with other candidates for attack in the presidential bureau.

Lastly my other concern is with what is happening in the electorate. I shall not elaborate on this point, but only suggest that the ultimate way to getting better members of Parliament, a stronger Parliament and more highly competent Ministers is through the electorate. How does one ensure that a majority at the polls means that voters have made a carefully-considered, deliberative and well-informed choice between great national issues, between candidates and between party policies? One enters on a topic more complicated than any discussion of the Constitution.

As I have indicated in my main theme, our biggest worries in the government of Australia are not whether the text of the Constitution is perfect, but whether we have enough wisdom – or even enough plain common sense – to govern our nation wisely.