

STATEMENT BY SIR. ROBERT MENZIES

AS IS WELL KNOWN, I HAVE, FOR A LONG TIME ABSTAINED FROM ENTERING INTO ANY CURRENT POLITICAL CONTROVERSY. BUT THE CIRCUMSTANCES TODAY ARE SUCH AS TO COMPEL ME TO BREAK THAT SILENCE. FOR, QUITE SIMPLY, I THINK MORE NONSENSE IS BEING TALKED ABOUT THE CONSTITUTIONAL POSITION OF THE SENATE THAN I CAN COMFORTABLY LISTEN TO, OR READ.

POWERS OF THE SENATE

IF WE DESIRE TO KNOW WHAT ARE THE POWERS OF THE SENATE OVER MONEY BILLS, WE FIND THEM EXPRESSLY SET OUT IN THE CONSTITUTION. THE DRAFTSMEN OF THE CONSTITUTION INCLUDED THESE PROVISIONS BECAUSE THEY KNEW (AND THIS IS A MATTER OF HISTORICAL FACT) THAT THE SMALLER STATES I.E. SMALLER IN POPULATION, WOULD NOT VOTE FOR FEDERATION UNLESS THEY HAVE SOME PROTECTION GIVEN TO THEM IN THE SENATE AND THEY GOT IT. AND THEY STILL HAVE IT. THE RELEVANT PROVISIONS OF SECTION 53 ARE AS FOLLOWS:

"THE SENATE MAY NOT AMEND PROPOSED LAWS IMPOSING TAXATION, OR PROPOSED LAWS APPROPRIATING REVENUE OR MONIES FOR THE ORDINARY ANNUAL SERVICES OF THE GOVERNMENT."

and

"EXCEPT AS PROVIDED IN THIS SECTION, THE SENATE SHALL HAVE EQUAL POWER WITH THE HOUSE OF REPRESENTATIVES IN RESPECT OF ALL PROPOSED LAWS."

NOW THESE PROVISIONS, WHICH ARE THE MATERIAL ONES, ESTABLISH QUITE PLAINLY THAT, WHILE THE SENATE MAY NOT ITSELF AMEND WHAT WE CALL "MONEY BILLS", IT CAN PASS THEM, OR REJECT THEM, BECAUSE THESE ARE THE POWERS OF THE HOUSE OF REPRESENTATIVES IN RESPECT OF THE SAME MEASURES.

LET ME REPEAT, THE SENATE MAY NOT AMEND THESE MEASURES, BUT IT MAY REJECT THEM, OR, OF COURSE, IN THE ORDINARY COURSE OF DEBATE, IT MAY ADJOURN THEM.

IT WOULD BE ABSURD TO SUPPOSE THAT THE DRAFTSMEN OF THE CONSTITUTION CONFERRED THESE POWERS ON THE SENATE WITH A MENTAL RESERVATION THAT THEY SHOULD NEVER BE EXERCISED.

NOW, NOBODY HAS ANY DOUBTS ABOUT THIS LEGAL POSITION.

MR. WHITLAM HAS NO DOUBT ABOUT IT WHEN HE WAS LEADER OF THE OPPOSITION, NOR DID SENATOR MURPHY, AS HE THEN WAS, WHEN HE ASKED THE D.L.P. SENATORS TO JOIN WITH LABOR IN THROWING OUT A FINANCIAL MEASURE. ALL THAT HAS HAPPENED IS THAT MR. WHITLAM IS NOW PRIME MINISTER AND, AS I KNOW FROM EXPERIENCE, PRIME MINISTERS BECOME A LITTLE FRUSTRATED IF THE SENATE CARRIES A VOTE AGAINST THEM. BUT THIS DOES NOT SETTLE THE ARGUMENTS OF CONSTITUTIONALITY. THE CONSTITUTIONS MEANING DOES NOT CHANGE ACCORDING TO THE DIRECTION FROM WHICH MR. WHITLAM AND HIS MINISTERS LOOK AT IT.

NOW LET ME GO ON FROM THERE.

I DO NOT BELIEVE THAT THE SENATE OUGHT AS A MATTER OF POLITICAL JUDGEMENT, TO EXERCISE ITS POWERS IN EVERY CASE.

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I THINK THAT IN THE INTERESTS OF STABILITY OF GOVERNMENT IT WOULD BE WRONG FOR THE SENATE, FOR EXAMPLE, TO REJECT A SUPPLY FOR THE SOLE REASON THAT IT DID NOT LIKE THE FINANCIAL MEASURES AND HAD THE POWER TO REJECT THEM.

EVERYTHING DEPENDS ON THE CIRCUMSTANCES. FOR A GOVERNMENT, FRESH FROM THE PEOPLE, WITH A VICTORY TO BE CHALLENGED IN THE SENATE UNDER SECTION 53, WOULD BE, IN MY OPINION, WRONG. NOT ILLEGAL, NO, BUT POLITICALLY WRONG.

BUT THESE ARE NOT THE CIRCUMSTANCES TODAY. THE GOVERNMENT HAS, IN THE LAST 12 MONTHS, ITSELF PUT UP A RECORD OF UNCONSTITUTIONALITY AND, IF IT IS NOT TOO STRONG A WORD, MISCONDUCT ON A VARIETY OF OCCASIONS.

ON ONE OCCASION, IT CONCERNED DR. CAIRNS, WHO WAS PUT OUT FOR NOT ACCURATELY INFORMING THE PARLIAMENT. ON A RECENT OCCASION, IT WAS MR. CONNOR (SO SENIOR A MINISTER, AS CAIRNS WAS, AS TO HAVE ACTED IN THE HIGHEST MINISTERIAL CAPACITY). CONNOR HAS GONE, BECAUSE, ON THE PRIME MINISTER'S OWN STATEMENT, HE MISLED THE HOUSE. AND THEN THERE IS THE NOT TO BE FORGOTTEN INCIDENT OF THE EXECUTIVE COUNCIL MEETING AT WHICH THE PRIME MINISTER WAS PRESENT, AND AT WHICH THE THEN ATTORNEY GENERAL GAVE A "KERBSTONE" OPINION.

AT THAT MEETING, THE EXECUTIVE COUNCIL, THE GOVERNOR GENERAL NOT BEING PRESENT, AUTHORISED THE BORROWING OF A SUM OF SO HUGE A DESCRIPTION THAT IT WOULD FAR EXCEED ALL THE BORROWINGS EVER MADE BY THE COMMONWEALTH IN 75 YEARS. IT WAS TO BE DONE THROUGH OBSCURE AND UNORTHODOX CHANNELS.

IT WAS TO BE A BORROWING FOR 20 YEARS. IT WAS TO BE A HUGE BORROWING IN WHICH THE SUM RECEIVED BY THE COMMONWEALTH FROM THE LENDERS WAS 95½ IN 100 , BUT THE TOTAL OF 100 HAD TO BE REPAID AT COMPOUND INTEREST!

THIS EXECUTIVE COUNCIL DECISION WAS SCANDALOUS. IT WAS CLEARLY AND UNBLUSHINGLY DESIGNED TO ESCAPE THE OBLIGATION IN THE CONSTITUTION TO GO TO THE LOAN COUNCIL UNDER THE FINANCIAL AGREEMENT FOR APPROVAL.

TRUE, IT THOUGHT IT EXPEDIENT TO CALL THE BORROWING ONE FOR, "TEMPORARY PURPOSES"; BUT A FIRST YEAR STUDENT WOULD LAUGH AT THIS AS A PRESCRIPTION OF THE LOAN TO WHICH I HAVE REFERRED.

IT WAS A DISREPUTABLE INCIDENT. IT WAS DESIGNED TO EVADE THE CONSTITUTIONAL OBLIGATIONS OF THE COMMONWEALTH.

NOW, YOU CANNOT ADD THESE THINGS TOGETHER AND SAY THAT THE SENATE OUGHT TO ACCEPT THEM WITH COMPLACENCY. THIS, IF THERE EVER WAS AN OCCASION, WAS ONE WHEN THE SENATE OUGHT TO HAVE EXERCISED ITS UNDISPUTED RIGHT TO DEFER OR REJECT FINANCIAL MEASURES INVOLVED IN THE BUDGET.

ALL THESE THINGS ARE SO SIMPLE TO ANYBODY WHO (LIKE MYSELF) HAS BEEN BOTH LEGALLY AND POLITICALLY FAMILIAR WITH THE CONSTITUTION AND ITS WORKINGS THAT I HAVE BEEN ASTONISHED TO DISCOVER THAT THE OPPOSITION IS NOW BEING TREATED, NOT AS A BODY AUTHORISED TO CHECK MALPRACTICE BY THE GOVERNMENT BUT, AS ITSELF, GUILTY OF VIOLATING AND DEFYING THE CONSTITUTION!!

I CANNOT IMAGINE THAT ANY COMPETENT LAWYER WOULD AGREE WITH THIS VIEW. BUT A LOT OF PEOPLE WILL, IF IT IS SUFFICIENTLY PUSHED INTO THEM BY A VARIETY OF PEOPLE IN THE GOVERNMENT, AIDED AND ABETTED BY SOME ELEMENTS IN THE MEDIA.

FINALLY, AND I WOULD SAY THIS WITH UNFAIGNED RESPECT FOR THE VICE REGAL OFFICE, I THINK IT WOULD BE A SINGULAR PIECE OF IMPERTINENCE ON THE PART OF THE PRIME MINISTER TO GO TO THE GOVERNOR GENERAL, WHOSE REPUTATION IS HIGH, AND WHO UNDERSTANDS THESE THINGS VERY WELL, AND ASK HIM FOR A PREMATURE "HALF SENATE" ELECTION, CALCULATED AND DESIGNED, HOPEFULLY, BECAUSE OF THE RECENT LEGISLATION ABOUT SENATORS FROM THE CAPITAL TERRITORY AND THE NORTHERN TERRITORY, TO GIVE THE GOVERNMENT CONTROL OF THE SENATE FOR A MONTH OR TWO, IN WHICH TIME, OF COURSE, ALL THEIR LEGISLATION WHICH NOW HAS BEEN ATTACKED IN THE SENATE, COULD BE CARRIED, WITH PERMANENT (AND I THINK DAMAGING) EFFECTS ON THE AUSTRALIAN POLITICAL STRUCTURE. TO OFFER ADVICE TO THE GOVERNOR GENERAL ON THE LINES THAT HAVE BEEN HINTED AT WOULD, I THINK, BE BOTH IMPROPER AND INSULTING. THERE IS NO LEGAL PRINCIPLE THAT PERMITS A WRONG DO<sup>ER</sup>~~ER~~ TO PROFIT FROM HIS OWN ACTIONS.

ROBERT MENZIES MELBOURNE 21 OCTOBER 1975