

The Proposed Australian States Parliamentary Constitutional Convention

By ROBERT MILLER*

Following a meeting¹ of the State Attorneys-General in Melbourne, on 26th February, 1972, it was announced² that agreement had been reached to call a convention of parliamentary delegates from all States to propose a new Australian Constitution. Implicit in this agreement is the suggestion that the time has now arrived for a fundamental reconstruction of our system of government. This revolutionary proposal is the result of unanimous calls for constitutional reform by each of the State Parliaments and is a sober, reflected judgment of their senior law officers. Plans for holding the convention are well under way and the Attorneys-General are acting as a steering committee for the convention, which is proposed to hold its first meeting in Sydney in May 1973.

In addition to calling for a new Constitution, the Attorneys-General also agreed to recommend to their respective governments that :

(1) the parliamentary delegates should consist of influential members of Parliament who would reflect the complete spectrum of views of their respective Parliaments ;

(2) the delegation from each Parliament should not exceed twelve members ;

(3) the Commonwealth should be invited to express its views as to its participation in the convention ;

(4) a permanent secretariat should be formed, headed by a leading constitutional authority.

The Attorneys-General agreement, and their recommendations for a national parliamentary convention similar to the pre-federation conventions, raise a number of seminal questions : Why call a constitutional convention when that method of constitutional reform is not the method prescribed by the text of the Constitution ? How real and how urgent is this call for a new Constitution ? What factors have prompted the States to make this request ? Is it an entirely new Constitution that is sought ? If so, what alterna-

tive might be proposed ? For instance, could it be seriously contemplated, given the conservative Australian political climate, that the States wish to change the system of a constitutional monarchy in favour of a republic ? Or is it, at most, a demand for a review of the distribution of powers between the Commonwealth and the States ?

The delegates to the convention are likely to be interested most in a reallocation of legislative powers between the federal and State governments. Whatever changes in this respect are recommended, the delegates cannot avoid the fact that what the Constitution allows is determined ultimately by the High Court and that the High Court has developed certain principles of judicial review which may be highly material in considering what form a new Constitution should take. There is the further question of how far, if at all, a new Constitution ought to incorporate (or even contradict) High Court rulings.

Irrespective of the amount of change contemplated, it has become increasingly self-evident that each of the States is disenchanted with the operation of the federal system and their clarion calls for constitutional reform are being sounded with insistent frequency.³ By reaching this accord the States have demonstrated their concern with a system that threatens their continued existence as viable entities. The very fact of this unanimous agreement, having regard to the conflicting interests of the States and the different ideologies between and within the several political parties, is a rare, unified display of the States' views concerning the Constitution. Central to any constitutional change is the need for cohesion and unity between the States, for without their unity, any constitutional reform is out of the question.

THE LAPIDARIAN CONSTITUTION

"A constitution that is perfectly suitable for all times and places has never been written."⁴ The

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¹ This meeting took place on 25th February, 1972.

² By Sir George Reid, the Victorian Attorney-General. See *The Age*, 26th February, 1972.

³ While these calls may be motivated largely by a desire to change the distribution of power between the Commonwealth and the States, they are also designed to appeal to voters' sympathies on the basis that the States are at the financial mercy of the Commonwealth.

⁴ Weinstein, *Issues for the 1967 Constitutional Convention*, p. I-1, in *Essays on the New York Constitution* (1966).