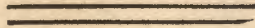
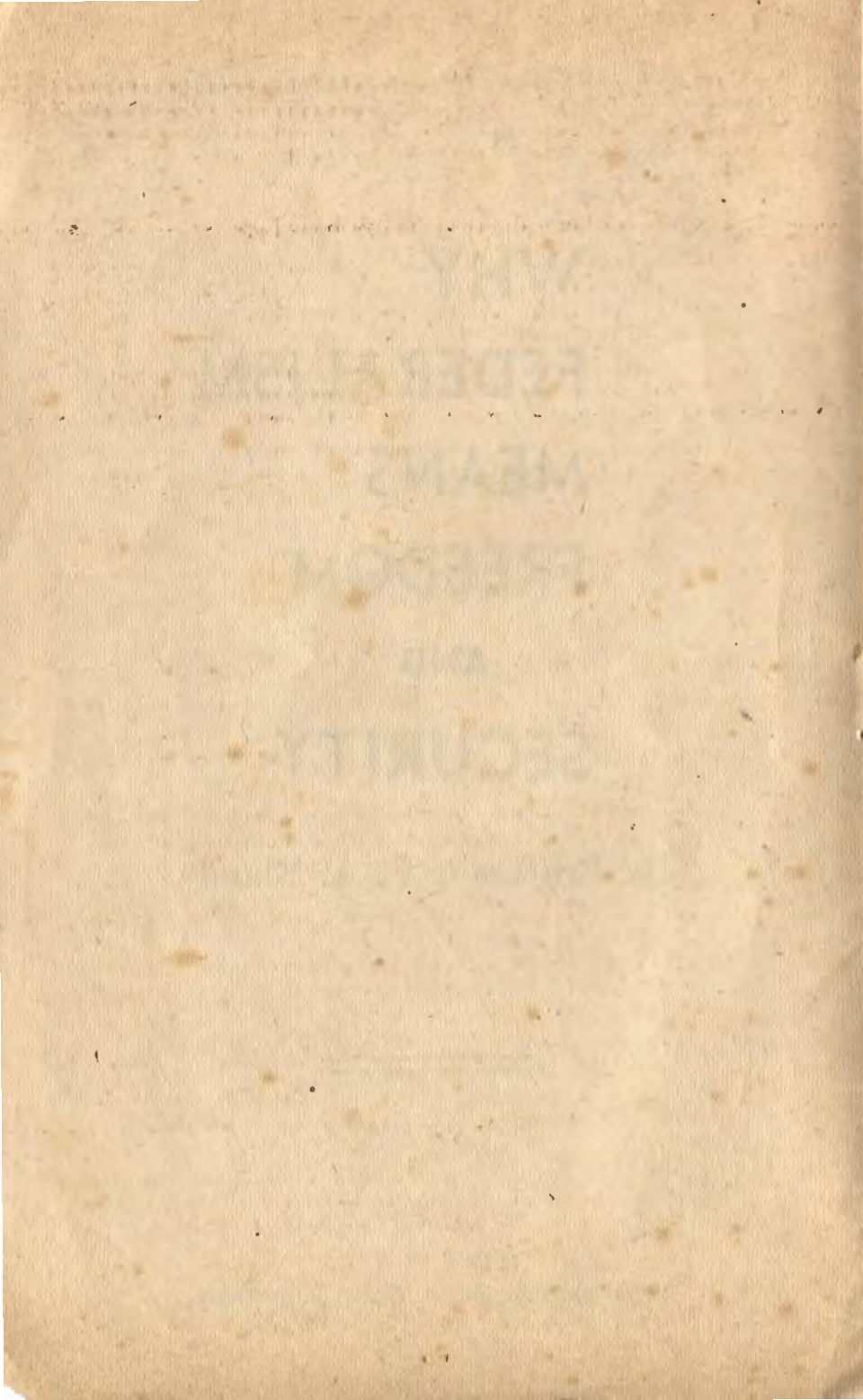


**WHY
FEDERALISM
MEANS
FREEDOM
AND
SECURITY**

By Professor F. A. Bland



Issued by the
1946 Referendum NO Committee



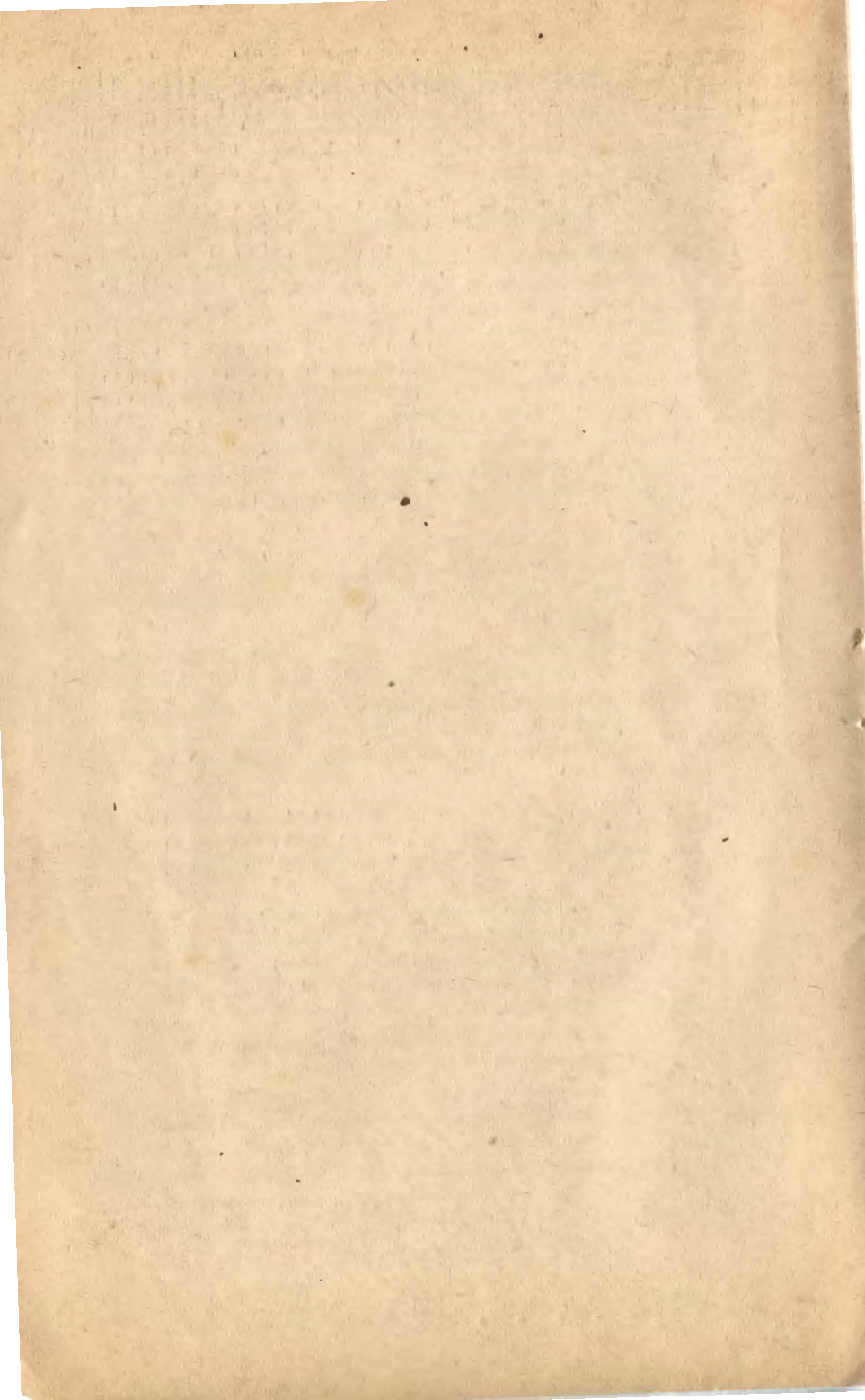
In the following pages, Professor Bland, who is Professor of Public Administration at the University of Sydney, presents a convincing explanation of the merits of a Federal system, and provides conclusive arguments why we must defeat the Referendum if we are to retain our Federal system.

Bear these points in mind

1. In a Federal system, the Commonwealth and State Governments are each allotted certain powers and functions. The Commonwealth is not satisfied with its share of powers and wants to get a monopoly of all powers.
2. The people have repeatedly declared at previous referendums that they do not wish the Commonwealth Government to have any more powers, let alone a monopoly of all powers.
3. By ignoring the people's clearly expressed wishes in 1944 and in submitting the proposals in another form, the Commonwealth Government is making it clear that it wishes to destroy the Federal system.
4. If the Federal system is destroyed, Australians will be smothered by regulations and orders issued by a Centralised Government at Canberra out of touch with and unable to understand the local needs of the people.
5. A centralised system inevitably inclines to totalitarian methods. World War II was fought to destroy Totalitarianism in all its forms.
6. If the Federal system is destroyed, we shall be saddled with a system of Unification. There will then be no State Governments, no written Constitution, and no High Court to prevent violations of the Constitution.
7. In that case, any Commonwealth Government will be able to do whatever it wishes. There will be no controls over its use of power, and there will be nothing to safeguard the liberties of the people.
8. A Federal system automatically protects your liberty by providing legal and constitutional checks to what a Government can do. By a written distribution of powers and functions between Commonwealth and State Governments, the powers of all governments are automatically limited.
9. Under a Federal system, a Government cannot do just what it wishes, but only what the Constitution allows.
10. If, therefore, you value your liberties, and wish to preserve popular rights against authoritarian government, you will have to fight to maintain our Federal system.
11. The Referendum is not to decide whether or not you are to have your social services, but whether all of those Social Services are to be at the mercy of a Centralised Government at Canberra.

THEREFORE

Vote . . . NO, NO, NO



FEDERALISM IN AUSTRALIA.

By F. A. BLAND.

What Federalism is—

Federalism represents an attitude to and a belief in the desirability of maintaining that form of government associated with a Federal system. When people living in a number of independent States desire to retain all the advantages of political independence while having a common government for specifically defined functions, and where there is a strong sentiment in favour of union for some purposes while retaining the separate identity of the States to deal with other matters, the result is the creation of a Federal system of government.

A Federal system thus created will exhibit the following characteristics—

- (a) A written Constitution which distributes the powers and functions of government between Federal and State authorities.
- (b) A process by which the Constitution may be amended, but which cannot be exercised by one of the members of the Federation, whether Federal or State.
- (c) A Court which is entrusted with the interpretation of the Constitution, and with deciding conflicts arising between the several Governments, and the people affected by the actions of those Governments.
- (d) A distribution of financial resources that will enable the several Governments to carry out their functions independently of each other.

For the system to work effectively, there must be such a regard for the values of Federalism on the part of the public and the several governments that there will be a sincere desire, as well as a determination to preserve it against competing forms and systems. In Australia in 1900 there was such a sentiment. Can it be said that it exists today? It existed in Germany in 1920, but to achieve his aims, Hitler destroyed it.

Why we Federated.

It is true that the decision to federate flowed primarily from an appreciation of the convenience of having a single Federal Government to speak for Australia as a whole in respect of such matters as foreign affairs, defence, and tariffs. It is also true that there was a vigorous determination on the part of the States to maintain and safeguard their independence in the Federal system, and to that end the Senate was created as the States House, while the financial provisions were so designed as to ensure that the States would have sufficient resources to maintain their independence. The financial provisions of the Constitution were finally

a compromise, but the compromise was accepted because of the most emphatic declarations that no Federal Government would ever be likely to adopt a financial policy which might deprive the States of their financial autonomy.

The Federal Compact.

The sentiment which brought the Constitution and the Federal system into being influenced the working of the system during the first two decades. It is true that the sentiment was disturbed, and even shocked by early administrative attitudes, and by the serious inroad upon State autonomy resulting from the decision to avoid paying over surplus revenues by appropriating such surplus revenues to Federal Trust accounts. Nevertheless the Constitution was regarded as a compact as well as a Statute, and the High Court, by adopting the doctrine of "implied prohibitions" as well as that of the "immunity of State instrumentalities" clearly indicated that it believed its duty was to ensure that the system would work. In other words, the High Court, whose original members had been ardent federalists, approached all cases before it from the stand-point of whether or not the effects of its decision would be to disturb the Federal compact. It inclined, therefore, to such an interpretation of the Constitution as would ensure the working of the Federal system in the manner contemplated by the Federation fathers.

The Compact Officially Discarded.

The Surplus Revenue Act, 1910, which superseded the Constitutional provision for returning to the States three-fourths of the net proceeds from Customs and Excise, and the imposition of direct taxation prior to and during World War I showed that the Federal Parliament, at least, had repudiated the principle of a Federal compact. This was followed by the *Engineers' case* in 1920 when the High Court also rejected the idea of a compact, and, therefore, the doctrine of "implied prohibitions." With these developments, there disappeared official concern as to whether legislative measures, judicial decisions, or administrative methods disturbed the Federal balance, or even rendered impossible the working of the Federal system.

The Uniform Taxation arrangements of January, 1946, mark the farthest point reached in the process of unilateral action on the part of the Federal Government in destroying the substance of the Federal system, and taken in conjunction with the Cowburn case (44 hours case), the Financial Agreement of 1928, and the legislation impounding the revenues of N.S.W. in 1932, has resulted in reducing the States to a position of utter dependence upon the bounty of the Federal Government. Even when the States have struggled to avert their subordination, they have also not been averse from accepting a mess of pottage doled out from time to time by the Federal Government, if only it were large enough to satisfy their current requirements. Their descent to the role of remittance men has been both a cause and an effect in diminishing the force of popular sentiment in favour of Federalism.

But the People Seek to Preserve it.

It is true that the people have persistently refused to agree to the enlargement of Federal powers, even though they have not been unaware that those powers have been strikingly extended by legislative and administrative action. Popular rejection of the 1944 powers referendum may be interpreted as a realisation that the move represented an attempt to end the Federal system. It may also be that the people realised that such a concentration of power entailed a serious threat to popular liberties in an age dominated by theories of totalitarianism. If either or both of these constructions are correct, it would appear that there still remains some sentiment in favour of Federalism. It, therefore, seems desirable to re-state the case for Federalism in such a way, as to provoke a revival of the Federal spirit, and to fortify those who wish to retain all the advantages of a Federal system. The need for such a re-statement is rendered the more urgent by the characteristic refusal of the Federal Government to accept the popular desire to maintain the Federal system. Despite the emphatic answer given by the electorate in 1944, it now seeks other powers, the use of which will have equally far-reaching effects as those rejected in August, 1944, would have had.

The Features of Our System.

Any proposals that aim either at shifting the balance of the Federal system, or at widening the field of uniformity in legislation and administration should be opposed irrespective of the specific character of the proposals. But to insist upon such an attitude is one way in which we can emphasize the need for a thorough overhaul of the Constitution with a view to a new distribution of powers and financial resources, and thus a return to an effective Federal system.

In the first place, it must be realised that the demand for powers that disturb the Federal balance is in itself an explicit denial of the Federal principle, for it aims at a monopoly of, rather than that partnership in government which is a fundamental feature of Federalism.

Condemnatory references to the "horse-and-buggy" Constitution and to the need for stream-lining our governmental structure also obscure the fact that political principles have no relation to age. Some of our most cherished popular liberties are enshrined in documents such as Magna Carta and the Bill of Rights and are ageless.

In the second place, it must not be forgotten that modernising the Constitution in the manner proposed is synonymous with a desire for centralisation of authority. Centralisation in Australia means remote government unrelieved by any of the mitigating influences of a soundly established and smoothly working system of local government. Furthermore, it is futile to imagine that the abandonment of the Federal system for one of unification would inevitably be followed by the institution of real local government. The woeful experiences of Germany and Italy between the two wars prove that the attitudes of mind and the

administrative processes that result in centralisation are wholly antipathetic to the ideas that are essential to the fostering of local government.

In the third place, it must be stressed that the economic and social conditions of Australia demand a Federal system if the resources of the continent are to be wisely developed, and if the natural diversities of the people are to be allowed full play. The outstanding advantage of a Federal system is that it allows for concentration upon matters demanding united effort without impairing the ability of the States to promote local diversities, and to apply dissimilar methods to dissimilar circumstances. In our case, a Federal system was deliberately adopted to achieve these purposes.

Federalism Re-stated.

With these considerations clearly in mind, we may now turn to a re-statement of the case for Federalism, and of the principles involved.

Federalism is more than a political and an administrative structure. It is more than a means for distributing the functions of government between the Commonwealth and the States upon the basis of capacity. It is not merely a protest against unification or a denunciation of the social and economic wastes of centralisation. It is an expression of fundamental, liberal, democratic principles that stress the significance of the individual, and affirm the need to protect the individual by legal limitation of governmental powers. It brings out better than any other political system the fact that government is only one of the institutions of Society, that it is never an end in itself, but always a means for the enrichment of the life of the individual. A Federal system enables government to be so organised as to reduce it to terms that can be understood by the individual. It keeps administration close to the citizen rather than remote from him. By promoting at one and the same time unity and diversity, it prevents the Leviathan State from smothering the individual and from ruthlessly imposing its will upon him in the name of egalitarianism and uniformity.

More than any other form of government, the Federal system safeguards those principles that Thomas Jefferson was instrumental in writing into the American Constitution—freedom of worship, freedom of speech and of the press, the right of peaceful assembly, equality before the law, just trial for crime, freedom from unreasonable search or censorship, and security from deprivation of life, liberty, or property without due process of law.

Federalism Limits the Government.

Because a Federal system requires a written Constitution that legally prescribes the powers of the Federal and State Governments, it best emphasizes the central theme of Liberal Democracy that the capacity as well as the powers of government are not unlimited: that there are things that not even a majority of voters may require a Government to do. In a Federal system, not merely are the scope and functions of government limited, but the manner in which those functions are administered is also subject to limitation. If the rights and liberties of the individual are thus

protected, the very existence of several governments is a further protection. It is likely that there will always be some of the Governments in a Federal system imbued with a spirit of liberalism: if there is only *one* Government, the people will not have available legal and political protection against arbitrary action.

While the exercise of unlimited power by the Federal Government is prohibited by the Constitution, arbitrary action by member States may in certain circumstances also be restrained by the Federal Government. Freedom from the State and freedom in the State are likely in the future to be very difficult to achieve in unitarian States. The Federal system provides an almost automatic guarantee of such freedom.

Federalism Protects the Individual.

It is a commonplace to observe that Government in freeing the individual from the tyranny of his fellows has succeeded in subjecting him to an even more ruthless tyranny of its own. Redress of grievances arising from the action of officials is becoming more and more difficult to achieve, since Ministers cannot be aware of everything that is being done by officials. The administration of the large State thus threatens the submergence of the individual in the mass, while the trend towards totalitarianism is more and more making him merely a means to achieve the purposes of the State. While the small State is not immune from these tendencies, it remains true that the smaller the State the less impotent the individual is likely to feel in the face of authority. General economic and social conditions are better understood, and their treatment by the Government can be more easily supervised, or at least, scrutinised by the individual. Since the closer the Government is to the individual the more responsive it is to criticism, freedom is enhanced. There is likely to be greater freedom from arbitrary action by the Government, and greater freedom in relation to other citizens in the small State than is possible in larger States. It is also more likely that the smaller State will evoke a feeling of responsibility from the citizen than will the larger State whose problems and administration must of necessity be remote from the lives of the majority of citizens.

Remoteness tends to produce apathy because a man's interests are always directly proportionate to his understanding. Apathy and indifference upon the part of citizens inevitably tend to produce irresponsibility on the part of a Government. Any constitutional policy for Australia based upon centralisation and unification should not overlook these considerations, and if the purpose of liberal democracy is to train the citizen to be responsible, and to be captain of his own soul, it should be the path of wisdom for our statesmen to foster the form and characteristics of Federalism, since the Federal system will achieve that purpose.

Who is there who has not contrasted the vital interest displayed in municipal areas by ratepayers in any proposal to increase municipal burdens with the apathy of citizens generally to the implications of Federal finance? In the municipality, government and administration are stern realities. In the case of the Federal

Government these things are invested with a character which distorts their real meaning. Even at the level of Commonwealth State financial discussions, long-term interests are constantly sacrificed for immediate advantages to the detriment of Federalism. And when States are reduced to the role of mendicants, competition for grants and subsidies is inevitable, and it becomes a virtue for each Treasurer to record the highest possible need of his government irrespective of consequences.

Need to Abandon War-time Totalitarianism.

One of the most pressing needs for reviving popular faith in Federalism is to demolish the war-time structure erected under the compelling pressure of the will to survive, and to challenge the administrative habits then developed. There appears to be a belief that Federalism can survive under conditions in which the States have been deprived of their capacity to discharge substantial legislative and administrative functions, and their enjoyment of independent sources of finance. During the war, people were willing to accept an almost totalitarian system if only they might defeat the totalitarianism of the aggressors. But it would be ironical if the sacrifices of the people were now used to enslave them to the very conditions they were determined to defeat. Only a restoration of the States to a position of independence will provide a check upon the tendency to perpetuate in peace-time the political attitudes and administrative methods that so ruthlessly deprived people of their liberties during the war.

Federalism Promotes State Diversities.

It must not be forgotten that the method of distributing the functions of government between Federal and State authorities is more than a device for limiting the powers of the respective governments. The purpose is to create an organisation that deliberately seeks to promote the maximum freedom of the member States to foster diversity of administration, while ensuring adequate unification in matters of common concern. None will deny the need for complete unity, even the need for uniformity of action in regard to such matters as defence, foreign affairs, and tariffs. But Federalists cannot and will not agree that uniformity should be applied generally. They do not believe that the principle of diversity is something to be overcome at all costs. Rather do they recognise that principles are a sort of natural law to be persistently followed, and, as far as we are concerned, to be intelligently applied to the peculiar conditions of the Australian economy.

Between the loose unity represented by the Federal Council of Australia (1885) and the current trend to compel uniformity in everything, there stands the Federal principle of diversity in unity. By insisting upon State autonomy within the Federal structure, the possibility is avoided of settling down to a condition of dull mediocrity that a policy of administrative uniformity throughout Australia would almost certainly bring about.

Diversity, not uniformity, is the law of life, and a policy which seeks to treat everyone and everything alike cannot be other than disastrous, and especially so in the circumstances of Australia. Even now, there are not wanting signs that people are resenting the compulsory blessings imposed upon them by the Federal Government, and are longing to be free to decide for themselves how they shall enjoy these benefits. A renewed faith in Federalism will lead people to insist that they shall be free to do so.

Present Referenda Proposals will Destroy the States.

The proposal to transfer to the Commonwealth control of organised marketing of primary products, and of the terms and conditions of employment denies the principle of diversity, strikes at State autonomy, and would deprive the States of the opportunity to develop their own distinctive economies. The proposal is also an explicit rejection of the Federal principle, and represents afresh the desire of the Federal Government to eliminate all necessity for consultation and co-operation with the States in the working out of the problems confronting the Australian economy. Instead of free agreement on the basis of a working partnership, there is to be compulsory conformity.

But Federalism Requires Collaboration with the States.

The necessity for consultation and co-operation is indeed one of the most important characteristics of the Federal system. Under it, Governments are compelled to submit their proposals to scrutiny and analysis that the party system tends to render unnecessary where they are only dealing with their own Parliaments. Is there much doubt that had the Federal Minister of Transport possessed exclusive power to proceed with the unification of gauges and railway extensions throughout the Commonwealth, we should have been committed to an expenditure which, far from enhancing the railway assets, might have saddled them with crippling liabilities? The necessity to secure the concurrence of the States in his scheme has resulted in its being thoroughly and critically examined.

No Constitutional Issues Involved.

In his more revealing moments, the Minister of Transport has claimed that opposition to his plan has illustrated the "constitutional" difficulties that confront him. The demand for power to control organised marketing of primary products is also stated in "constitutional" terms. This is simply a party tactic. There is no "constitutional" issue in any of the proposals in the sense that without an alteration, the Federal Government cannot work under the existing Constitution. Were there no other argument, it should be sufficient to point out that the Federal system has worked for nearly half a century without the Commonwealth Government having the powers sought. There is nothing to show, and no proof can be adduced to show, that the people of Australia would be better off if the powers sought by the Commonwealth Government were transferred to them. But looking back at the

serious consequences that have followed from errors of judgment on the part of officials and Ministers, who have been under no obligation to submit their plans to independent examination, one would be justified in asserting that the people are likely to be worse off if the Commonwealth Government succeeds in persuading the people to agree to its proposals.

No one will deny that any Government would be inconvenienced if it were free to do what it wished. Few will agree that such freedom would always minister to the welfare of the people. It is possible to argue that it is anomalous for the Commonwealth Parliament to have power to deal with customs and excise, or with conciliation and arbitration, and yet be unable to harmonise the effects of a fiscal policy or a wage policy with the general terms and conditions of employment throughout Australia. It may be anomalous, but it is not a "constitutional" issue. It is mainly a political issue, and partly an administrative difficulty. But it must not be forgotten that to confer upon the Commonwealth Parliament complete power to deal with the terms and conditions of employment throughout Australia would be so to upset the Federal balance as to destroy the Federal system. Between them, the Commonwealth and the States possess all the powers needed. While the Constitution remains as it is, if they want to exercise their powers, there must be agreement between the Commonwealth and State Governments. The Commonwealth wants to be able to do what it wishes without regard to the States. It does not want to work in partnership with the States; it wishes to ignore or coerce them.

We are thus brought back again to the central problem of a Federal system. It provides the means for securing unity and uniformity where that is essential. But it enables dissimilar conditions to be treated appropriately by the States with their knowledge of local conditions. It prevents the concentration of unlimited power in a single government, and thus protects the individual against arbitrary or unwise political and administrative actions. It compels dispassionate discussion of policies and methods, and deliberately emphasizes the superiority of the principle of agreement over that of compulsion.

Therefore States must be Preserved.

Autonomous States within the framework of the Federal structure are a basic condition of Federalism. Opposition to the proposed changes serves notice of an intention to preserve that autonomy at all costs. It is not a denial of the need for unity in essential matters, but a warning that there are definite limits of the extent to which uniformity is to be imposed upon us. That implies a belief that there is need for a systematic overhaul of the Constitution. But the overhaul must be general; the Federal system must not be destroyed by the process of piecemeal attrition. Furthermore, any redistribution must proceed from the premise that Federalism is a national and an individual necessity. By insisting upon the preservation of the Federal system, Federalists claim the right to examine the current proposals and to

appraise their effect upon Federal principles. They will not lightly be swayed by specious arguments that the Constitution needs rationalizing, but will give serious consideration to the long-term effects of that policy. On the basis of past experience, there will be no hesitation in discounting the alleged economies of unified control and of large-scale administration.

Nevertheless, financial considerations are of far less importance than the preservation of the liberty of the individual and of the social advantages of a Federal system. Indeed, we must be prepared to pay for that preservation in the same coin as we pay for the right to pursue the democratic way of life. No plea for economies, for uniformity or for unification, should confuse those who believe that a Federal system is the best way for limiting the powers of government, for legally protecting the individual from the consequences of his unwise political actions, and for promoting the dissimilar treatment of dissimilar economies in the several States.

Nor must we be deluded by any promises with regard to the use to which the Government will put any new powers it obtains. The Commonwealth Parliament has never shown the slightest concern for the solemn promises made at the time the Federal compact was agreed to. On the contrary it has gone out of its way to find means for disregarding them. It is a fundamental principle of Parliamentary Government that no Parliament can bind its successors. Every Government must be free to act as its conscience dictates. But the creation of a Federal system was a different thing. As we said earlier, we were entitled to expect that Parliaments, Officials, and Courts would accept the obligation to carry out the compact and make the system work. They have not done so.

Liberty Depends upon Limited Governmental Powers.

It is, therefore, wise to recall some remarks of Thomas Jefferson, one of the architects of the American Constitution. He said that "it is a dangerous delusion were a confidence in men of our choice to silence our fears for the safety of our rights: confidence is everywhere the parent of despotism. Free Government is founded on jealousy, and not on confidence . . . It is jealousy, not confidence which prescribes limited Constitutions to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which and no further our confidence may go."

Fears for the safety of our rights are justified not only by recalling the manner in which promises have been disregarded in the past. They are justified by a realisation of the manner in which Parliamentary Government operates to-day.

Only Federalism Provides an Effective Check upon Government.

Throughout the XIXth Century, Governmental power was limited by the working of traditional checks and balances. The veto power of the King, the revising powers of Upper Houses, and the independence of popularly elected Assemblies afforded an

effective check upon the activities of government. All the checks and balances have disappeared in unitary systems of government, although many people are under the illusion that they still operate. To-day, a Government with a compact majority can do whatever it wishes to do. As in England, it is possible to change the whole social and economic system by ordinary legislative measures. If we lose our Federal system, we shall have a unitary system, and there will be no limit to the exercise of power by the Commonwealth Government. There will be no States, no constitution prescribing limits to governmental power, and no High Court to protect the people against violations of the Constitution.

On the other hand, a Federal system does provide an effective check upon the exercise of powers by both Commonwealth and State Governments. Each can do not what it wishes but what the Constitution allows. To that extent, Federalism means freedom. For not only is the individual protected by the constitutional distribution of powers and functions between the Commonwealth and the States, but the existence of several governments is itself a protection. Furthermore, a Federal system is essential for the preservation of democracy itself. In recent years there has emerged a debased form of democracy which looks askance at tolerance, compromise, and discussion as ingredients in the democratic way of life. In many of its aspects, the new democracy is akin to dictatorship, in which everything is being determined and controlled by the masses.

And Federalism Safeguards Democracy.

Federalism is a force which moderates the absolute power of the masses. And indeed democracy requires this moderating influence. It requires to be repeatedly reminded that the decision of the majority does not constitute the essence of democracy but is really an expedient. Again, Federalism is democracy between States. Both are expressions of the theory of self-determination, both are intrinsically co-operative as opposed to all forms of authoritarianism organisation.

Thus in the changed character of parliamentary government and of democratic thought, Federalism remains a most effective bulwark against arbitrary action by political parties, and the incipient dictatorship of the masses. It is a bulwark that we in Australia, warned and informed by the experiences of other States overseas, should strenuously defend.

