CHAPTER 2

THE ROAD TO CANBERRA

The Commonwealth of Australia Constitution Act, a statute of the United Kingdom Parliament, united the six previously separate colonies of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania into one indissoluble Federal Commonwealth under the Crown of the United Kingdom and provided the Commonwealth with its Constitution. The Act, which was brought into operation by proclamation in Sydney on 1 January, 1901 named Melbourne as the initial meeting place for the new Parliament. Section 125 of the Act provided:

> *125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.*
>
> *Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown Lands shall be granted to the Commonwealth without any payment therefor.*
>
> *The Parliament shall sit at Melbourne until it meet at the seat of Government.*

The section was fashioned in the form set out above only after a series of amendments at the Federal Conventions which drafted the Constitution and after agreement had been reached at a conference of colonial Premiers. The wording of the section inspired a popular belief that as land within the federal territory was to be vested in and belong to the Commonwealth no land within the territory could ever be owned by any private person or corporation without a constitutional amendment.[1] The belief is still current[2] even though over 66 years ago a legal explanation of the provision was given:

> *. . . the Commonwealth acquires under this section territorial rights only, and not proprietary rights . . . landowners or Crown Lessees within the territory chosen for the seat of Government will not be dispossessed unless the Federal Parliament chooses to dispossess them.*[3]

A Cabinet of Ministers under the leadership of Edmund Barton was sworn in immediately after the proclamation of the Commonwealth. The office of Prime Minister having no legal existence at the time Barton was called Prime Minister by courtesy and convention.[4] The caretaker Government busied

itself with preparations for the first federal election, choosing 29 and 30 March, 1901 as polling dates. The Prime Minister opened the campaign for the Government in the Maitland (N.S.W.) Town Hall on 17 January, 1901. On the platform with him were his senior Ministers Alfred Deakin (Vic.), Charles Cameron Kingston (S.A.) and William Lyne (N.S.W.). Barton explained in some detail the legislative and administrative programme which his Government proposed to carry out, and, speaking of the territory to be chosen for the seat of Government he said:

> . . . *So far as the law of the land allows land within the federal area will not be sold. Its ownership will be retained in the Commonwealth. The land will be let for considerable terms but with periodical reappraisement so that the revenues thus obtained will assist the cost of creating the Commonwealth Capital. More than that we shall take care to put no fancy prices on land. We shall not play into the hands of the speculators. We will give fair value for the acquisition of land. We shall give just terms. We shall fix a date which is independent of any artificial heaping up of value – such a date as the passing of the Constitution. Such dates were before the speculator began to operate. You see then we shall be able to get the land on fair terms, lease it on fair terms and still make a profit for the Commonwealth. I put that to you not as a land nationaliser. We began in this country with land alienation and as regards that it is possible and probable that it is impossible to depart from that system now but in the federal area we shall have a free hand. We shall have a new departure and as a matter of business we shall see that we do not pay unfair and speculative values for land and that the people get the benefit of the prices we pay for it, and nevertheless there shall be a considerable profit that will help to take the load of the cost of the creation of the Commonwealth off the backs of the people of Australia.*[5]

This declaration of federal territory land policy by Barton was particularly important. He was the leader of the Protectionist Party which was the least influenced of all parties by the ideas of Henry George which were having such a profound influence in Australian politics. It was generally believed that a Protectionist Government was the least likely to concern itself with land tenure in the federal area. Barton's use of the earliest possible opportunity to state his Government's land policy therefore settled the matter. Henceforth there was less reason to doubt that one day a Commonwealth Government would obtain the ownership of all land in the federal area and establish a system of leasehold tenure. A few years earlier B.R. Wise (N.S.W.) and P. McMahon Glynn (S.A.) had urged the Federal Constitution Conventions to insert in the draft constitution a clause prescribing leasehold tenure within the territory. Wise argued that if the Constitution was to be commended it should indicate in the clearest possible manner that those principles which the electors had most at heart were conserved.[6] In South Australia, the House of Assembly was convinced that the federal area presented a golden opportunity

to retain land rent for the benefit of the community. It refused to accept the rejection of Wise's amendment and agreed unanimously that the Convention should again be requested to establish a principle of leasehold which would *give to posterity the advantages of the increased land values which would necessarily result from enormous Government expenditure in the territory.*[7] At the 1898 Melbourne Convention McMahon Glynn therefore moved to insert in the draft constitution a clause providing:

> *. . . that no federal territory should be alienated in fee simple – nor leased except in perpetuity at its fair annual rent, subject to periodic appraisement at intervals of not more than 14 years in a manner to be determined by Parliament.*[8]

McMahon Glynn's amendment was rejected but the Convention debates on this and on Wise's earlier amendment are a clear indication of the strength of Henry George's influence. The most significant factor however was the support given to these amendments by delegates who were to become Ministers in Barton's Government. But it was the opposition of Barton himself which was probably decisive in securing the defeat of the amendments. His view was that the whole question of land tenure within the territory for the seat of Government should be left to the Federal Parliament rather than prescribed in the Constitution. Barton could be described as a political moderate although the leading part he played in forging the constitutional straitjacket which imprisons Australia must qualify the description. In any event his policy speech was the first authoritative statement on the land tenure to be applied in the then unselected federal territory.

The absence in the Maitland address of any reference to the benefit Commonwealth land ownership would be to future planning and constructional authorities in the new capital city must be considered in the light of public knowledge and interest of the times. The concept of town planning was almost unknown and, even to the knowledgeable, not necessarily desirable. The Maitland audience was, like most Australians of the time, without any enthusiasm for the idea of spending public money on the erection of a new capital city. A homily on the wisdom of town planning would have been greeted with stony silence, but an assurance that the proposed capital city could itself be a source of income was most comforting and brought forth *loud and sustained cheers.*

The Prime Minister and his colleagues had come into the federal arena which they had created from proud and excessively parochial colonies – now States, the leaders of which saw a threat to their hitherto unchallenged pre-eminence. They suspected every legislative and administrative proposal by the new Commonwealth. For them the writing was on the wall – if they cared to read it. The special correspondent of the London Morning Post had written:

As the power of the purse in Great Britain established by degrees the authority of the Commons, it will ultimately establish in Australia the authority of the Commonwealth. The rights of self-government of the States have been fondly supposed to be safeguarded by the Constitution. It left them legally free, but financially bound to the chariot wheels of the central government. Their need will be its opportunity. The less populous will first succumb; those smitten by drought or similar misfortunes will follow; and finally even the greatest and most prosperous will, however reluctantly, be brought to heel. Our Constitution may remain unaltered but a vital change will have taken place in the relations between States and the Commonwealth.[9]

The special correspondent was Alfred Deakin, Attorney-General and later Prime Minister of the new Commonwealth. If this had been known at the time it could only have intensified suspicion. But the State politicians were not going to surrender without a struggle. They eagerly embraced a Court created doctrine of reserved State power to bolster their hopes and beliefs that sufficient implied prohibitions could be read into the Constitution to preserve State rights and restrain the activities of the Commonwealth. They actually believed the States were sovereign entities, or at least they told the electors so. Few could have visualised the States *going into pawn to the Commonwealth*[10] and fewer still would have welcomed the possibility. In those early years Deakin's vision would have been dismissed as the wishful thinking of one of the few unificationists.

The federation of the Australian colonies did not bring any lessening in the widespread anti-federal feeling. Federation merely spurred it in new directions and gave it new objectives. The need to have any federal capital city at all, its location and the cost of erecting such a city were subjects of confused argument and bitter division for generations.[11] Undoubtedly the cost argument was very often a cloak to conceal anti-federalism but it is equally true that many ardent federalists were divided on most questions relating to the proposed capital.[12]

G.H. Reid for the Free Trade Party did not concern himself with land tenure within the federal territory when he opened his Party's election campaign at Sydney on 4 February 1901. He stated a case for free trade and warned of the dangers of any but very limited customs.[13]

The Labor leaders McGowen, Watson and Hughes opened their campaigns on another note.[14] Labor was the most recent of the three political persuasions, the Party being only a few years old. Its attitude to federation had veered between luke warm support and outright opposition. It had not been involved as a Party in influencing or settling the draft constitution and was therefore generally suspicious of the constitutional structure forged by its political adversaries. In particular the party believed that no Labor candidate would ever be elected to the Senate. It suspected that chamber of being designed as a last ditch conservative stand to thwart any progressive measures

proposed by the House of Representatives. The granting of equal representation in the Senate to the smaller and more conservative States was denounced as a negation of the principle of manhood suffrage. Labor leaders of this period did not explain the existence of a second chamber as a judgment of history, or seek to excuse it by reference to the Committee work it could do. Rather they spent the election campaign ridiculing the idea of the Senate as *a States House* and calling for its abolition. But such pure idealism could not survive. It does not belong to the political world of mere men. The election result proved that Labor candidates could be elected to the Senate. Labor won eight of the thirty six Senate seats and this played havoc with the ideal. Inside Parliament the spirit was willing but the flesh was weak. Outside Parliament Labor's democratic and radical ideals evaporated before the very edifice erected by the Party's political enemies. Within a few months the Party confirmed the establishment of its own supreme policy making and governing body on the same federal basis as the Senate and so died democratic radicalism in Australian politics!

The first Commonwealth Parliament met in Melbourne in May, 1901. The election produced a three party situation. In the House of Representatives Barton's Protectionists won 32 seats, the Free Traders 27 and the Labor 16. The Barton Government continued in office with Labor support for the term of the Parliament. However, on questions such as the location and size of the area for the new capital city party allegiances were forgotten. No one Party as such had any clear cut policy on these or any other matter affecting the territory for the seat of Government.

The constitutional provision that the territory for the Seat of Government should contain an area of not less than 100 square miles i.e. 64,000 acres, disturbed many members and Senators in the first Parliament. In true Georgian style they each sought the *unbounded savannah.* The Federal Conventions had adopted the 100 square miles minimum after considering the United States experience where Congress had been given power to accept a District *not exceeding ten miles square* as the seat of Government. Such a small area was of course only adequate for a city area and as Convention delegates preferred the idea of a self-contained district comprising its own rural areas, water supply and other incidental surroundings the 100 square miles minimum was inserted in the Constitution.[15]

Within a few hours of the opening of Parliament, Senator Staniforth Smith, one of the most persistent advocates in either House of a system of leasehold tenure within the federal territory, moved for the early selection of a site in order that *the great practical experiment in land nationalisation could be made.*[16] The supporting speech by Senator Smith, a moderately conservative Free Trader from Western Australia merits attention.[17] It is doubtful if many of the speeches during the first decade add much more to our understanding of the motives and hopeful expectations of the period. Smith said:

If we pick a site where there is a large and flourishing town, as in the cases of Orange and Queanbeyan, the expense of buying out the property owners would be so enormous that millions of pounds would have to be expended before we could start building the Capital. I presume we would have to buy out the owners and cart away the whole of the existing town as rubbish.

The references to Orange and Queanbeyan may not have been flattering but they do illustrate some of the factors which had to be considered when choosing a site for a well planned capital city. The Senator continued:

If we have an area of 10 miles square directly we decide upon the site of the federal capital there will be a perfect eruption of land grabbers syndicates and speculators who will rush over to buy up the land all around with the idea of forming suburbs for the people to dwell in. The consequences will be that the people of the Capital instead of living within the Federal Territory, will reside in suburbs belonging to private people and the immense revenue the Commonwealth should receive as ground landlord will go into the pockets of the speculators.

Senator Smith was a strong advocate of the selection of a very large area for the territory for the seat of Government and an equally strong believer in the Commonwealth ownership of all the land within that area. He argued that:

. . . if we select a large area, not only will we draw an enormous revenue, increasing every year, from the Crown Lands of the federal territory – and I hope it will be put on record that not one inch of that territory shall ever be alienated from the Crown in freehold – but we shall have the opportunity and advantage of having a federal territory in which to put to practical test many of the social problems exercising the greatest brains of the world for many years past – the federal territory will fulfill very much the same functions as a model farm fills in regard to an agricultural area. We can there test these various social problems – and if we find they are successful they can be planted out in the Commonwealth. Such questions as land nationalisation and the nationalisation of the liquor traffic can be tried in the capital and if it is proved that they are successful we have very good warrant for assuming that they will apply equally well throughout Australia.

To attribute influence is a hazardous and speculative business – it depends on all sorts of assumptions for accuracy – and yet it may be permissible to attempt to locate the inspiration for this concept of the federal territory as a social laboratory, a trend setter for legislation and for administrative practices. The idea was occasionally expressed during the Convention[18] years but in the first decade of federation it was a regular theme of Parliamentary debates. Probably the strongest influence was Joseph Chamberlain's

programme of *municipal socialism* in Birmingham during the early 1870's. Chamberlain's reforms were, in their day, considered radical, even revolutionary. They attracted world wide attention for decades.

Ebenezer Howard's *Garden Cities of Tomorrow* (1898) which was published after this concept was first expressed could perhaps have been an added influence in the early Parliaments.

The debate on Smith's motion did not reveal opposition to the establishment within the federal area of a leasehold system of land tenure but it did disclose that there were many who had doubts about its success.[19] The main point seemed to be that people would be quite willing at first to accept leasehold but having acquired it they would clamour for freehold and returning members pledged to grant it they would force Parliament to give it to them.

Richard O'Connor, Government leader in the Senate, expressed sympathy with the desire to have a large area included in the federal territory but he emphasised the final decision would depend on circumstances beyond the Government's control. If the area was Crown Land ceded to the Commonwealth by the State of New South Wales without any payment the Government would not be particular how large the area. If on the other hand the territory was such that the Commonwealth had to pay for it, then however desirable it might be to have an immense area the choice would more or less be restricted by considerations of cost.[20]

The size of the area to be selected for the federal territory was made an issue in the House of Representatives on 19 July, 1901 when King O'Malley (Labor. Tas) moved:

> *That in the opinion of this House, it is desirable in the interests of human progress that the Government secure an area of not less than 1,000 square miles of land (i.e. 640,000 acres) in a good healthy and fertile situation, the ground only to be let on building or other leases to utilizers, all buildings to be erected under strict Government Regulations, with due regard to public health and architectural beauty.*[21]

O'Malley had been assisted in the preparation of the motion by Austin Chapman (Protectionist: Eden Monaro: N.S.W.) but it was seconded by Hume Cook, a moderate conservative from Victoria and an advocate of a *brand of municipal socialism which would present to the world a spectacle the world has not previously seen – an entire city, and all connected with the city owned and managed for the people of Australia.*[22]

The idea of a planned city and positive covenants in leases are evident in the motion but in the debate which followed speakers were almost entirely concerned with the unearned increment in land values which would be created by the expenditure of public money. Prime Minister Barton however considered the motion should be reworded and he moved as an amendment:

That in the opinion of this House it is desirable in the interest of human progress that the Government secure an area well watered, healthily situated and large enough to meet all possible requirements and secure to the Commonwealth the benefits to accrue from the position of the capital, such area when secured, to remain forever the property of the Commonwealth; the ground only to be let to utilizers, all buildings to be erected under strict regulations with due regard to public health and architectural beauty.[23]

Barton informed the House that it was the firm intention of the Government to see that there would be no room for the land speculator in the federal area.

Wherever else he may have free play I think his claws should be off the site of the federal capital.[24]

The motion as amended was passed without division.

The size of the proposed federal territory became a matter of the utmost importance in the minds of these experimenters in land nationalisation. To some a very large area was essential if the experiment was to be effectively tested. To others the experiment should be made in a small area to minimise interference with vested rights. This question was not settled in the year 1901 or the following year but it was Edmund Barton who expressed what was probably the majority view on the proposed capital city. The Prime Minister appeared to find the constant description of his Government's land policy as an *experiment in land nationalisation* unattractive and in one of his last speeches in the House he set out what he regarded as the fundamental reasons for a leasehold tenure in the yet to be selected territory for the seat of Government. The contents of this speech merit quotation at length. Barton said:

I desire to say that I am definitely of the opinion that the Commonwealth should resume all private lands within any area that is selected, not necessarily for the purpose of driving out those who have acquired the titles of those lands, but for the purpose of bringing them more entirely under the control of the Commonwealth, and of adopting within that area such a land system as may commend itself to Federal Parliament, so that should it prefer a system of leasing to any system of alienation it may be perfectly free to give effect to that policy. I say again – as I announced a little more than two years ago in a speech at Maitland, of which I have sometimes heard – that I am definitely of the opinion that, within the area that is chosen, the Commonwealth should be the landlord or the proprietor of every square inch of private land, no matter how generous and how fair it may be, and I have every confidence in its disposition towards the occupants of that land. As the expense of going further in the erection of the capital increases, as it may largely increase, there will be a progressive settlement which will tend to swell the revenue derivable from the land

within the federal area, and thus provide a fund, not only for meeting interest, but also for the extinction of debt. It does not follow that because the resumption of land will cost money it will be an extravagance. No doubt as time goes on, if Parliament does not see fit in the interests of the various component States to vote sufficient sums of money to carry out all public works out of revenue, it would be a proper thing to take into consideration whether we should not establish some system which will be continuously productive of revenue to meet the possible interest of any loan. I believe that if that were done anything that we might propose in that behalf for the purpose of completing this capital in course of time would be received by the public creditor with perfect favour simply because he would have a gilt edged investment. I prefer, not for every purpose, but as a business proposal for this purpose, the system of leasing, with periodical reappraisement, on fairly long leases – the terms upon which you will propose to erect your capital will need an increasing revenue of a certain kind and at the same time the assurance of the continued tenure of land in the hands of the Crown, so that fund may never be disturbed. Taking these matters into consideration, I think as a mere business proposal a system of leases with periodical reappraisement will be about the best manner in which we can set about the meeting of any expense which we may incur in connection with this project.

The emphasis on the revenue to be obtained from land ownership in the federal territory had become more of a political necessity than ever. A majority of those who had even bothered to vote in the referendum had voted in favour of a rigid Constitution which necessitated the selection and at least some development of a territory for the seat of Government. But on second thoughts no one was willing to pay for it. What better escape from the dilemma was there than to generate a belief, to make a claim that the as yet unknown residents of the as yet unselected territory would meet part or even all of the expenditure involved. This untapped source of riches was now being described as *a handsome endowment for all time.*[26] But the Press was not enthusiastic. To newspaper editors the subject of land tenure within the federal area had lost importance. All around Australia they began or accelerated a campaign of pouring scorn on the idea of what they termed *a bush capital,* of criticising the expenditure of any public money, however obtained, on such a ridiculous project![27]

The newspaper onslaught on the proposed federal capital city found very little support in the first Parliament. The Representatives and Senators alike were fascinated by the possibilities of the experiment in land nationalisation. The ardent advocacy of William McMillan, Deputy Leader of the Free Trade Party and a member chiefly distinguished by his conservatism deprived the question of all party significance. He felt it necessary however to warn the Government against any half measures – every square inch of land

within the federal area must be acquired and a system of leasehold tenure operate to the complete exclusion of all other tenures.[28]

The choice of a site for the new capital was the subject of many resolutions, visits of inspection, a Royal Commission[29] and finally the 1903 Seat of Government Bill. The House of Representatives chose Tumut and the Senate chose Bombala. Some English newspapers ridiculed the idea of a federal capital called Tumut.[30] The name was said to be too quaintly modest for a capital city. Neither House would give way and the Government quietly dropped the Bill.

The intention of the Government as expressed in the 1903 Bill was that an area of about 1,000 square miles was to be the federal territory. Edward Braddon, a conservative member and former Premier of Tasmania aligned himself with those who dreaded the expenditure of public money which could be involved in the erection of a federal capital. Although he urged extreme caution and expenditure only on absolute essentials Braddon was not without hope for the future. In his view, if the federal territory was properly administered:

> *. . . that is to say, if not one rood of it be alienated but all of it let on lease, renewable from time to time upon, say decennial assessments – the rentals derived will prove ample to defray all the expenses connected with the establishment of the federal city.*[31]

The approval given to a leasehold system within the federal area in these early years was of a general nature. No speaker seemed prepared to go beyond open endorsement and put forward ideas as to what particular provisions should be included in the legislation establishing the system. G.B. Edwards, moderately conservative Free Trade member for South Sydney, was a partial exception to this reluctance to be committed on details. In 1903 numerous public meetings were held in Sydney to discuss possible amendments to the Constitution to provide for the establishment of the federal capital in that City. Edwards condemned the meetings and denounced the appeal to taxpayers on the ground of economy as foolhardiness indulged in by people who had not even bothered to consider the economics of the matter. Pointing out that the cost of the land on which to erect the necessary federal buildings in Sydney or in Melbourne would be at least 20 times greater than the cost of the land in any of the localities being proposed for the federal capital, Edwards maintained that the land in the proposed localities could be obtained at its *prairie value – something between £2 and £5 an acre.* He considered that with the rapidly increasing value of the land:

> *. . . we could naturally expect under a leasing system – to get a rental sufficient to pay all the interest on any sum which I have known anybody extravagant enough to advocate as necessary for erecting the requisite buildings.*[32]

Edwards maintained that after the capital had been in existence 25 years and £5 million had been spent on it the city would be financially self-supporting and not cost one penny of taxation. He foresaw a city of 50,000 people in 25 years, 100 miles of streets and 12,000 houses with one million feet of street frontages at an annual average value of £4 per foot. Reckoning that value at 20 years purchase or at 5 per cent he confidently predicted an income of £200,000 p.a.

The claim by Edwards that 5 per cent for the unimproved value of the land was necessary as an annual land rent was probably the first mention of the percentage value rental. In any event 5 per cent was accepted without discussion and any lesser percentage was soon dismissed as an inadequate return *allowing for the costs of a Lands Department.*[33] But as the year 1903 drew to a close the whole concept of a Government owned federal territory of about 1,000 square miles parcelled out to lessees was losing favour with a small and more conservative group of Free Trade Senators from New South Wales. The territory was being ridiculed as *a thousand square mile Bellamy Utopia.*[34]

The Seat of Government Act 1904 provided that the seat of Government for the federation should be within 17 miles of Dalgety in the south eastern area of New South Wales, contain an area not less than 900 square miles and the compensation for land payable by the Commonwealth should be the valuation of the land on 1 October 1904. The Act represents the confirmation of the agreement which had developed between the three political parties that the federal territory should be considerably larger in area than the 100 square miles minimum mentioned in section 125 of the Constitution.

The first Commonwealth Labor Government was particularly disturbed about the £25,000 rental being paid by the Commonwealth annually to private individuals and corporations in Melbourne for office accommodation. Gregor McGregor, (S.A.) Government leader in the Senate, where the Bill was first introduced, considered that this expenditure necessitated a degree of urgency in selecting a territory and although he remained loyal to the decision to have a 900 square mile territory he expressed his personal belief that it would be more advisable for the Commonwealth to acquire an area of 5,000 square miles. Confident of the revenue to be obtained from the Commonwealth ownership of land within the territory McGregor forecast a time when the capital city would contain one of the greatest seats of learning in Australia maintained by endowments of land or by revenue derived from the rent of land.[35] Such glowing predictions of future revenue received a mixed reception. The debate on the Bill and on the amendment to insert 5,000 square miles in lieu of the 900 square miles indicated growing doubts about the benefits to be obtained from the establishment of a system of leasehold tenure within the territory.

The Seat of Government Bill was introduced in the Representatives on 20 July, 1904 by E.L. Batchelor, (S.A.) Home Affairs Minister.[36] Referring

to *the experiment in land nationalisation* Batchelor reminded the House that it was not specifically a Labor Party proposal and that in the first Parliament practically every member was in favour of it. The Minister was addressing the second Parliament, membership of which differed from that of the first. Edmund Barton, the ardent advocate of a leasehold system of land tenure in the yet to be selected federal territory *not as a wild socialistic experiment but purely as a business proposal* had left Parliament and gone to the High Court to interpret the Constitution he had done so much to draft. William McMillan, the conservative Free Trade deputy leader who had urged the nationalisation of every square inch of land within the federal territory had retired. Perhaps the Minister felt the necessity to reopen the question and reassure supporters of the intentions of his Government and to strengthen the faith of waverers by an appeal to the memory of the big names of the first Parliament.

But land tenure was not the issue agitating members and enlivening the debates. The issue was the immediate cost of erecting any new capital city. The Minister referred to the many members who wanted to transfer the temporary meeting place of Parliament to Sydney and thus remove any need for the vast expenditure – to hold the erection of a permanent capital city over until the population had expanded and resources developed. In addition, numerous members from Sydney were unhappy with Dalgety as the site for the capital.

The effect of the constitutional provision requiring the seat of Government of the Commonwealth to be within territory granted to or acquired by the Commonwealth was clear but it was ignored. Which State Government would be willing to cede jurisdiction over an area of at least 100 square miles within the boundaries of its own capital, the economic centre of its domain? The answer was obvious as was the force of the argument used by G.B. Edwards in 1903 that the establishment of the new capital in any existing State Capital would not reduce expenditure but would necessarily increase it. But such considerations received little attention in the heat of debate and the unclear thinking of many of the leading men of the day.

The Seat of Government Act 1904 was one of the few legislative successes of J.C. Watson's Labor Government and if it had been carried into effect an area around Dalgety would today be the capital of the Commonwealth. But this was not to be. The area was considered by the Sydney press to be too close to the Victorian border. The New South Wales Government and Parliament took exception to the Act each asserting that it was for the Parliament of New South Wales first to offer a site to the Commonwealth and that as Dalgety had never been offered by the Parliament of New South Wales it could not be the capital. To ensure the message was received loud and clear Premier Carruthers travelled the State threatening secession from the Commonwealth if the selection of Dalgety was maintained. He withdrew the Gazetted Notices of 2 July, 1904 which reserved from sale or lease any Crown Lands in the vicinity of Dalgety. The Notices had been Gazetted by

former Premier John See who, as Premier, had offered the Dalgety site to the Commonwealth. The effect of the withdrawal of these Notices was a rapidly diminishing area of unalienated Crown Land which under the Constitution the Commonwealth would obtain without any payment. This spelt the beginning of the end for Dalgety as the site for the federal capital. Most of that which is written as the story of the abandonment of Dalgety and the selection of the Yass-Canberra site can be disregarded as superficial. To understand the change it is necessary to resist putting any emphasis on the events and incidents of the year 1908. The Sydney press selected Canberra in 1905 and declared its choice in such vigorous, if not threatening, terms that thereafter the issue was never in doubt.[37] It remained only for certain leading politicians to announce their inevitable conversion. This they did in 1908.

The years of enthusiasm for the experiment in land nationalisation had faded by 1905. The whole idea of a capital city was under critical review. Prime Minister Deakin believed that in choosing a site for the capital members should not consider themselves or succeeding generations as *it had to be recognised that the seat of Government would certainly not be more than a mere township for many years.* Deakin doubted whether it would ever be a great city no matter where it was situated. He rejected the objections that a capital city would be too costly. *In my opinion,* said Deakin, *the cost should be small and need only be small – it seems preposterous to contemplate the erection of palatial buildings in any capital that we may choose. We ought not to be above accepting the simplest accommodation – without descending to the modesty of the wattle and the daub, anything that will shelter honourable members from the inclemency of the weather ought to be good enough for us, and anything which will shelter our public servants during the 3 or 4 months of the year which they will be in the federal capital ought to be sufficient for them.*[38]

The preoccupation with costs during the early years of federation is not difficult to understand. The Federal Government did not enter the personal income tax field until 1915. Upon Federation it was assumed that Federal Government revenue would come from the returns of its Departments, particularly the Post Office, and through indirect taxation in the form of customs and excise and from its ownership of land within the area to be chosen as the territory for the seat of Government. As late as the financial year 1909-1910 of the £15,500,000 revenue collected by the Federal Government all but about £200,000 was obtained from customs, excise and the Postmaster-General's Department. In 1910 however a fresh source of income was opened by means of a Land Tax Act. This was a tax on the capital unimproved value of land. It was putting into practice the method advocated by Henry George of securing the rent of land for public purposes and at the same time destroying or weakening the system of private land ownership. George's aim was to convert freehold tenure into a kind of rent paying leasehold.

The Land Tax Act 1910 thus gave expression to political ideas on land tenure currently popular. In Deakin's view the new Act was unconstitutional. Its advocates claimed that it would make it *unprofitable to hold big estates* and would foster closer settlement. These were popular objectives but there is no doubt it was also designed to be a new source of much needed revenue for the Federal Government.

> *The Labor Party had come into power determined to establish old-age and invalid pensions, maternity allowances, an Australian Navy, the trans-continental railway and Northern Territory development – this would mean nearly £5 million p.a. Customs and Excise which were until 1910 the only source of federal tax revenue were inadequate. One or two million pounds from the big hated landowners would therefore be useful.*[39]

The Seat of Government Act 1908 repealed the Seat of Government Act 1904 and provided that the seat of Government was to be in the Yass-Canberra district. The territory to be granted to or acquired by the Commonwealth was to contain an area of not less than 900 square miles and have access to the sea. The amount of compensation to be paid by the Commonwealth for land was not to exceed the value of the land on 8 October 1908.

The 1908 Act should have been the end of what is euphemistically described as *the battle of the sites.* But it was not. The substitution of Yass-Canberra in lieu of Dalgety as the territory for the seat of Government was, with diminishing intensity, a source of dissension, a cause of much bitterness for decades. The Fisher Government (Labor) embittered its relations with its supporters for its part in the selection.[40] The denunciations came from all around Australia and from people of all political persuasions. Particularly strong opposition to the substitution came from Queensland. One Senator castigated New South Welshmen for their *ma-statishness* and denounced New South Wales as *a slippery customer* with an unparalleled record of absolute turpitude in the selection of the capital.[41] Sydney *commercial interests* were seen as the real instigators of the substitution. Another questioned whether New South Wales should not be put out of the federation. A particular point of criticism was the stratagem employed to secure a combination of votes. Yass-Canberra was joined as one site with the result that *the very site which received only one vote at every ballot is that on which the federal capital is to be established.*[42]

While the 1908 Act finally decided the general district within which the seat of Government was to be situated it yet remained to determine the actual territory within that district and to provide the machinery for the acquisition by the Commonwealth. Home Affairs Minister, Hugh Mahon (Labor. W.A.) issued instructions to C.R. Scrivener, District Surveyor, to make a thorough topographical investigation of the Yass-Canberra district in order to place such facts before the Minister as would enable Parliament to decide on the most suitable territory for the purposes of the seat of Government within that district.

In February, 1909 Scrivener reported that he had made an examination of the area and submitted reports upon possible sites. The Minister thereupon appointed a Board comprising:

Colonel D. Miller, Secretary Home Affairs Department,
Lt. Colonel P. Owen Director-General Public Works,
Colonel W. Vernon, Government Architect New South Wales, and
C. R. Scrivener,

to consider the reports and advise the Minister generally with respect thereto. The Board concurred with Scrivener in his selection of the federal territory and recommended its adoption. The Board also made some other recommendations one of which was that a preliminary investigation be made of practical routes for a railway between the City site and a port.

The Board's recommendations were carried out and a report was made to the Minister advising that an area of about 1,015 square miles around Canberra should be acquired, together with an area of about 2,300 acres at Jervis Bay for the purposes of a Commonwealth port.

The Board's recommendations were adopted by the Commonwealth Government and on 20 July, 1909 Prime Minister Deakin forwarded particulars of the proposed territory to the Premier of New South Wales and invited him to take steps under the Constitution to pass a State Act for the surrender to the Commonwealth of sovereign rights over the territory.

Section 111 of the Constitution provides:

111. The Parliament of a State may surrender any part of the State to the Commonwealth and upon such surrender and the acceptance thereof by the Commonwealth such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

The Premier of New South Wales submitted a proposal for the transfer to the Commonwealth of an area comprising 900 square miles differing from the Commonwealth's proposal in that the towns of Queanbeyan and Captain's Flat were excluded from the area to be surrendered. On 18 October, 1909 the Prime Minister of the Commonwealth and the Premier of New South Wales subject to the approval of their respective Parliaments, agreed to the surrender by the State and the acceptance by the Commonwealth of the territory as proposed by the Premier.

The Seat of Government Surrender Act 1909 (N.S.W.) and the Seat of Government Acceptance Act 1909 (Commonwealth) ratified and confirmed the Agreement between the Prime Minister and the Premier whereby the state agreed to surrender and the Commonwealth agreed to accept the 900 square miles in the Canberra district as the territory for the seat of Government of the Commonwealth. The territory was described in the Schedule to the Acts and the Governor-General was authorised to declare by proclamation

that on and from a date to be proclaimed the territory as described was accepted as a Territory of the Commonwealth.

The Seat of Government Acceptance Act 1909 provided that all laws in force in the Territory immediately before the day it was to be proclaimed a territory of the Commonwealth were, so far as applicable, to continue in force until other provision was made. The second Fisher Government which assumed office after the 1910 election had reasons to make *other provision* promptly. No Labor Government could afford even indirect responsibility for the operation in its territory of certain New South Wales legislation relating to industrial disputes. The Seat of Government (Administration) Bill, introduced into the Representatives on 9 November, 1910 declared the offending N.S.W. legislation inoperative in the Territory and made provision for general administration. Home Affairs Minister King O'Malley spoke of the Commonwealth at last coming into its own kingdom after many years of waiting, of the Crown Land in the area to be ceded to the Commonwealth by the State without any payment and of the Government's intention to acquire privately owned land in the Territory. He continued:

> *. . . the intention is that the Territory shall be governed entirely by the Commonwealth.*
>
> Bruce Smith (Cons. N.S.W.) *By Star Chamber procedure?*
>
> Dr. Carty Salmon (Protectionist Vic.) *Will the effect of the Bill not be that the Minister for Home Affairs will really govern the territory?*
>
> O'Malley: *I do not know of any other man better qualified for the work. If I have that pleasure for a while the honourable member will see a new Eden there. When I viewed the site from where the Military College will be placed it seemed to me that Moses, thousands of years ago, as he gazed down on the promised land saw no more panoramic view than I did . . .*

But the Minister's imagery did not pass unchallenged. One of the strongest objections to the selection of Canberra was its alleged lack of water supply and the Minister's vision on this occasion was contrasted with his earlier views when he declared *a cow would be in danger of dying from thirst if it visited Canberra district without carrying a water bag with it.* The Minister was reminded that although,

> *he may desire to pose as a second Moses, looking over the promised land he has not the power to strike the rock and cause water to gush out.*

Undaunted by such irrelevancies the Minister proceeded to declare the Government's land policy in the Territory. The importance of this policy is that it has been followed by successive Governments to the present day. O'Malley announced that as there was no immediate need to expend large sums of money in purchasing privately owned land the Government had decided on a limited land acquisition programme. Only those lands contained

within the area surveyed for the city site and such other portions as would be required for some special purpose in the foreseeable future were to be acquired. The shortsightedness of and ultimate injustice which was inevitable with such a policy are clear today. But in 1910 it seemed reasonable that unless the Commonwealth had some immediate or not too distant need for privately owned land it should reduce its expenditure by leaving the owners undisturbed. The continuance of this shortsighted policy for over 50 years explains the continuance of some freehold land in the Territory even today.

The Bill contained a clause providing that *until the Parliament makes other provision for the establishment of a local legislature for the Territory the Governor-General may make Ordinances having the force of law in the Territory.* G.B. Edwards objected to the clause. The wording was said to presuppose the necessity for the establishment of a local legislature which was not even contemplated by the Constitution. In Edward's view the *great city which might grow upon this site is not going to be governed by the residents of the city but by the people of the whole Commonwealth.* O'Malley declared that he had always been of the same opinion and accepted an amendment that the words *establishment of a local legislature* be deleted and the word *government* be inserted in lieu thereof.

The Government leader in the Senate, Gregor McGregor, had referred to this question of territorial government the previous day. When introducing the Northern Territory (Administration) Bill McGregor said:

> *. . . there are two kinds of territories for which provision is made in the Constitution. They are distinct from each other and have varying possibilities. One class of territory has to be ceded to the Commonwealth for the purposes of the federal capital . . . that is a class of territory which can never become a state of the Commonwealth. In other words, it can never receive anything more than the powers of municipal government.*

But on 9 November, 1910 it was not only the question of territorial government which was disturbing the moderately conservative Edwards, at that time the member for North Sydney. He complained that the Minister had failed to adequately state the Government's land policy. *Our difficulty* – he said, *is to find out what this policy is.*

> *I wish to know whether it is intended to resume all the alienated land in the Territory. The clauses should be more definite . . . it has been the almost unanimous opinion of this Parliament that there should be no alienation of Crown Lands. Why is it not in this Bill? The Commonwealth will spend some millions of pounds in the Territory and should profit by the increase which that will give to the land. We should buy out all existing owners irrespective of contracts . . .*

The several Ministerial assurances that there would be no alienation of Crown Land in the Territory were apparently not considered adequate. The

Bill was recommitted and the opening words of section 9 of the Seat of Government (Administration) Act 1910 were inserted:

> *No Crown Lands in the Territory shall be disposed of for any estate of freehold . . .*

Here then is the linch pin of the leasehold system which operates in the Territory. Section 9 does not establish that system – that is done by later Ordinances – but as the Commonwealth (Crown) now owns about 87% of territory lands the section ensures the continuance of some form of leasehold tenure if not the present form. The repeal of section 9 need not necessarily mean the end of the Territory leasehold system but the step to its abandonment would be a short one.

No one Government, no one political party, no one man can claim the Canberra leasehold tenure which results from the above prohibition, as its or his own particular contribution to Australian social or political development. The tenure must be seen in its historical perspective. The Australian yearning to designate some public figure or figures as the father of institutions or programmes must be ignored when considering the origin of the Territory leasehold system. To indulge the weakness on this occasion would involve an even greater degree of historical suppression and distortion than is usually the case. Justice demands an acknowledgement of the simple truth that before and during the early years of Federation there was a widespread belief in the need for Government ownership of all the land within the proposed federal territory. The demand that this ownership should be obtained was probably more universal than any public demand in Australia has ever been. There were a few who questioned whether a leasehold system could operate successfully but their sceptism never amounted to outright opposition.

NOTES ON CHAPTER 2.

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