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SUBJECT CC MASTER



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From the Private Secretary

4 July 1988

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

The Prime Minister had a discussion this afternoon with the Lord Chancellor and the Foreign Secretary to discuss the Australian request for a permanent loan of one of the two originals of the Commonwealth of Australia Constitution Act.

The Prime Minister said that the birth of a nation was a remarkable event and not to have it legitimised by a birth certificate must be galling, especially when the foster parents had two. She wondered how people in this country would feel if somebody else had two copies of the Magna Carta and we had none. She thought we were being selfish in refusing the Australians, and eventually other Commonwealth countries, one of the two copies of their Constitutions. She recognised the risk that they would press for the return of other documents and artefacts but believed it would be possible to limit any concession to each country's Constitution Act alone.

The Lord Chancellor said that he had a lot of sympathy with the Australian request and had originally thought it right to agree to it. But the Public Records Act of 1958 gave him the responsibility of supervising the care and preservation of the Public Records. He did not believe he could permit the original copy in the Public Records Office (PRO) of such an important document to be given away without a further Act of Parliament. He had considered whether the power given to him in the Act to deposit a document in a place outside the PRO if there were suitable facilities and inspection by the public was assured, but there was no evidence that this power applied outside the United Kingdom. Although it was true that we had two copies, only one was in the PRO: the other was a Parliamentary record and not under his control. He did not like the fiction of a permanent loan: either we should decide to make a gift of the Constitution Act or not.

The Foreign Secretary said that his original reaction had been very similar to that of the Lord Chancellor but also shared his view of the great difficulties. It was instructive

that the Canadians had been presented with a facsimile copy of their Constitution and had not subsequently reverted to the issue of having an original.

The Prime Minister said that it was clear that the instincts of all three of them were the same. In those circumstances, she thought it right to try to find a way around the obstacles. She did not think that we could offer the Parliamentary copies of the Constitution Acts since it was those copies which actually legitimised the Constitutions. The issue only concerned, therefore, the copy in the PRO. It would be important to ring-fence any concession so that it was limited to National Constitution Acts and did not extend to any other documents. There might be difficulties in some cases, for instance where a country had been divided after Independence. But she did not believe these were insurmountable. A short paper should be prepared for OD which should examine ways in which we could provide Commonwealth countries with one of the originals of their Constitution Act, where it was clear who had the legitimate title and subject to guarantees about preservation and availability to the public. The paper should also consider what legislation to give effect to such a decision would involve.

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I should be grateful if a paper could be prepared as soon as possible, with the option of a discussion in OD before the Prime Minister's departure for Australia on 29 July. I imagine it should be a joint paper between the Lord Chancellor's Office and the Foreign and Commonwealth Office.

I am copying this letter to Paul Stockton (Lord Chancellor's Office), Philip Mawer (Home Office), Brian Hawtin (Ministry of Defence), Alex Allan (HM Treasury) and Alison Smith (Lord President's Office). + *Trevor Wooley*

C. D. POWELL

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