



# Department of Justice

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ADDRESS

OF

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Americans who have never been in the Southern Hemisphere have a natural curiosity and fascination with the beautiful and exotic lands below the equator. The subject also lends itself to some interesting twists. For example, I'd be interested in knowing whether Australians refer to the United States as being "up over". Or think it peculiar that our warmest climates are south, not north.

Actually, I am most struck on this visit not by our differences but by the amazing similarities between our two countries. Just consider the following:

- the land areas of Australia and the continental United States differ by about one twentieth of a percent. If you would be kind enough to give us the Sydney Opera House, I think we would just about be equal.
- both countries extend across the breadth of an entire continent, from ocean to ocean. Even the latitudes covered are nearly the same.
- the terrains display great similarities, with mountain ranges, and great plateaus and deserts.
- we both count our assets in dollars and cents.
- even the things which we produce are much the same, such as beef, wheat, oil, natural gas, and iron ore.
- the rugged pioneering and adventuresome spirit of our citizens is the same.

In fact, after appropriate adjustments for the seasons, the side of the road on which you drive, and the direction in which the water spins out of the bathtub, an American visitor to this country might think that he or she had come to a mirror image of the United States.

That could be, needless to say, an unfortunately superficial view. For one thing there are some equally obvious dissimilarities between us, such as the vast difference in our population totals. There are vast differences in our budgets as well; I note with mixed feelings, for example, that the Australian defense budget is almost exactly equal to that of the United States Department of Justice. But even more important, the "mirror image" view would do justice neither to the distinctive character of the Australian Commonwealth nor to the special relationship which the United States and Australia have enjoyed, and to which this group is devoted.

Although we were both originally colonies of Great Britain, when we did finally assert our independence, we chose different ways to do so. The American colonies, for example, told the world that "all political connection between them and the state of Great Britain is, and ought to be, totally dissolved". The Commonwealth of Australia, on the other hand, was created by an Act of the British Parliament, and continues to be a major

member of the British Commonwealth of Nations. This basic difference is clearly reflected in our respective political systems. Australia naturally assumed a British parliamentary system with responsible party government, while the United States chose to separate powers sharply among its three branches of government. It is true, of course, that Australia established a federal system similar to ours, and also composed a written constitution which is similar in some respects to the American Constitution. No objective observer, however, could ever accept a characterization of the Australian political system as an improved copy of the United States. Each of us has properly developed systems best suited to our individual needs.

We do, of course, share many of the same problems, and we have experienced many of the same cultural and political pressures. This can be illustrated from many aspects of our national lives. As a lawyer, however, I am particularly interested in the ways in which our legal systems - the legislatures and courts - have responded to the issues of the day. It is not too surprising, for example, to learn that in both Australia and the United States, there has been a long-standing tension between the federalist concept of state sovereignty, and the need for federal powers in order to cope with problems of massive national scope. In American history, one of the most far-reaching cases on the subject was the

famous McCulloch v. Maryland, which was argued in 1819 before the United States Supreme Court. The relatively unimportant facts of the case concerned the federally chartered Bank of the United States, which established a branch in the state of Maryland. Maryland then attempted to impose a state tax on the Bank. After hearing arguments by some of the finest legal minds of the day, Chief Justice John Marshall ruled that the federal government was not unconstitutionally encroaching on the powers of the states. These were his enduring words:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter of and spirit of the Constitution, are constitutional."

To this day, when the difficult issue of federal-state relations is discussed, there is hardly an argument which does not echo to some extent one of the arguments made in that landmark case.

The issue, as I've noted, is not unique to the United States. In fact, the Commonwealth High Court here considered a case ten years ago, entitled Worthing v. Rowell et. al., (44 Australian Law Journal Reports 230) which also went beyond the particulars of the case to consider the issue in greater generality. The facts there concerned some land acquired by the Commonwealth in the State of New South Wales; the question was whether state health and safety laws were applicable there. The

court decided that the state had no jurisdiction there at all, but what was really remarkable about the decision was the extent to which reference was made to the American experiences on the issue, to the American Constitution, and to American court decisions. The High Court, noting similarities with the American system, also took pains to point out the independence of the Australian constitutional framers. In the court's words, they

" . . . had before them the example of the Constitution of the United States of America and were well aware of the then recorded experience of the operation of that Constitution over a period of many years . . . the (Australian) colonies were neither sovereign nor independent. Our forefathers in drafting the Constitution, aware of this fundamental distinction, observed the need . . . to provide against the disadvantages which they could observe to have flowed from the Constitution of the U.S.A."

So here is an excellent illustration of two related and distinct legal systems, both grappling with similar problems, while taking care to retain their distinctive characters and philosophies.

Because the world is much smaller today than it was at the time of John Marshall, or even 10 years ago, there is often legal discussion of the most current issues nearly simultaneously. Let me cite just two examples. The first concerns immigration. As you know, that is a very vexing issue in the United States right now. But one of the most interesting legal questions connected to that issue is whether or not the due

process guarantees contained in the American Bill of Rights are applicable to persons who are not permanent residents of the United States. There is much public discussion on the matter, and it has come to the courts recently with respect to Iranian and Mexican nationals in the United States. Interestingly enough, a case heard in the South Australia Supreme Court two years ago considered the closely related question of procedural due process for illegal aliens (R. v. MacKellar, 20 Australian Law Reports 119). As it happened, the court ruling stated that "the Minister was not bound to follow any requirements of natural justice before exercising his power to order deportation." That is contrary to what has been decided in our courts, but the considerations and arguments were quite similar.

The second example is from the area of environmental law, which has developed out of great necessity in many industrial nations. The 1970's in the United States were marked by many laws and court decisions protecting the environment, and that has been the case here as well. But it was particularly interesting for me to learn that the Queensland Supreme Court ruled two years ago that corporations as well as individuals could be indicted for criminal violations of a 1973 water pollution act. (R. v. Ampol Refineries Limited, 1978 Queensland Reports 378). Federal and state laws in the United States have also been moving in this direction of exacting stiffer punishment

from corporations and corporate leadership who are responsible for fouling the environment.

The lesson for the lawyer today is, I believe, that although differences among nations cannot be ignored, there is much to be gained from close knowledge of how related systems are grappling with our common problems.

This is especially true of countries and societies which are as friendly and as interdependent as ours are. I have naturally chosen to focus on parallel dynamics in the law, but that is merely one aspect of the rich relationship which we have enjoyed, particularly since World War II. There are few of our citizens old enough to remember that war who do not recall General MacArthur's dramatic arrival in Australia and the successful battles in the Pacific which bonded the American and Australian fighters together. American soldiers brought back stories of the incredible exploits of their counterparts both in battle and in social enjoyment. In fact, a long-standing stereotype was that an Australian could easily drink a person of any other nationality under the table and then go out and win several sets of tennis before enjoying a full dinner.

The Australians, for their part, made clear their appreciation of the United States. During the war, Prime Minister Curtin expressed it in his famous words: "I make it quite

clear that Australia looks to America, free from any pangs about our traditional links of friendship to Britain." Today, the very beautiful and impressive American memorial in Canberra, a project of this Association, eloquently reflects our close ties.

Our pasts are linked, our present is interrelated and our futures will certainly be tied together. We depend on each other in the area of trade and investment. We both have significant contributions to make to the defense of the Free World. Above all, each of us can and must learn from the other's attempts to solve human problems, whether it be through science, education, the arts, or through law.

There is an old quip that Australia's problems stem from the fact that geographers have never been able to agree on whether it is a continent or an island. Of course, it is today really neither, and the same is true of the United States. Rather, we are members of a partnership of nations in a shrinking world. The strength of our commitment to that partnership will determine the strength, security, peace and freedom of men and women everywhere.