

The Case *for*
BANK
NATIONALISATION



PAMPHLET No. 1.
N.S.W. Fabian Society

6d.

PREFACE.

This pamphlet is the first product of the Fabian Society of New South Wales. In accordance with the policy of the Society, the views expressed represent those of the Research Group responsible for the preparation of the material, and do not necessarily imply approval by the Society as such.

The aim of the Fabian Society is to stimulate free and independent research among socialists and to present facts and opinions worthy of consideration by the Australian Labour Movement and the Australian public. Nevertheless, on this particular issue, the issue of bank nationalisation, the Society stands fully behind the general approach in the following pages. Current propaganda by opponents of bank nationalisation is attempting to confuse the issue which must be clear to any thoughtful person. The issue of bank nationalisation rests fundamentally on the plain fact that, to maintain employment in the coming years, any Government, whether Labour or not, must have complete control of its credit and financial policy. Because of recent events, it has been made clear that adequate power over credit policy can be maintained in the circumstances of 1947 only by complete nationalisation of the private banking system.

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The Case for Bank Nationalisation

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I. CREDIT POLICY AND FULL EMPLOYMENT.

The Causes of Depression.—Fifteen years ago, at the time of the Great Depression of 1929-32, our knowledge of the causes of depressions and mass unemployment in capitalist economies was very inadequate. The fumbling and often disastrous policies which were pursued by Governments and by those in charge of the monetary system were, in part at least, due to sheer ignorance. To-day we do know broadly how depressions come about and what must be done if the economy is to be maintained on an even keel with full employment of all productive resources.

We know that the main cause of the periodic ups and downs in the level of economic activity is the inherent instability of investment expenditure of private business firms, at home and abroad. We know that this instability is primarily due to the fact that business firms will invest money only if they believe investment to be profitable. Their expectations of profit vary from time to time, chiefly because, as more and more investment is undertaken in any given field, opportunities for further profitable investment in that field gradually diminish.

Depressions and mass unemployment occur, therefore, because periodically the capital expenditure of business firms or, in the event of a slump in a major foreign country, the income of producers for export falls off. The result is a reduction in people's income and purchasing power, which leads to further declines in employment and production in a vicious circle throughout the economy.

Full Employment Policies.—Australia has in the past largely "imported" her depressions from abroad, and slumps abroad are likely to remain a more serious danger to full employment in Australia than slumps starting at home by a falling-off of business expenditure of Australian firms. And, unfortunately, there is little that an Australian Government can do to prevent the occurrence of economic storms in the rest of the world. But an Australian Government can prevent any serious repercussions of foreign depressions on Australian incomes and employment, just as it can prevent the vicious spiral which would follow a decline in domestic business expenditure, by maintaining the incomes of Australian consumers through a budget deficit policy of public works, tax reduction, farm price stabilisation and in other ways. It can also forestall slumps in domestic business expenditure by keeping in check the speculative and inflationary tendencies which characterise booms in a capitalist economy and which make the succeeding slumps the more certain and severe. These policies, therefore, must be the mainstays of a full employment programme for Australia, and it is important to note that they are policies for which, in the last resort, the Commonwealth Government alone is responsible.

The Role of the Banks.—How, then, do money and banking come into the picture? Let it be emphasised at once that they play a subordinate role. Depressions and unemployment are not caused by banks or anything that happens of a purely monetary character; nor can depressions be prevented by monetary and banking policy alone. But the role of credit policy, and therefore of the banking system, is nonetheless of crucial importance.

The banks come into the picture because they supply part, and have an important influence on the total volume, of the funds which business firms spend on investment. The amount of money which banks are willing to lend to business firms, and the conditions on which, and in particular the rate of interest at which, banks are willing to grant advances, have an important effect on the level of investment expenditure. This, as we have seen, in turn determines the level of income and employment.

Now, private banks lend money for profit. The more they lend to credit-worthy borrowers the more profits they make, and there are only two factors which limit the amounts they will be willing to lend: the willingness of customers whom they consider "credit-worthy" to borrow and the ability of the banks to create additional credit without endangering their own position. The former factor depends largely on the profit expectations of business firms—they will be willing to borrow for expansion in times of good trade, but not in times of depression. The latter factor is nowadays effective only if there is a central bank, such as the Commonwealth Bank, with powers to control the banks' investible funds.

It is clear, therefore, that unless the banks are adequately controlled they will be tempted, in the interests of their shareholders, to extend advances freely in times of good trade, and to curtail credit in times of bad trade, when their own position seems insecure and "credit-worthy" borrowers are few and far between. In other words, private banks are liable by their credit policy to aggravate the instability of private investment and thus of the capitalist economy as a whole.

This instability is likely to be made more acute where, as in the Australian banking system, a group of large semi-monopolistic banks exists. In normal times many of these banks operate under monopolistic agreements severely limiting the degree of competition for advances. But these agreements tend to be weakened and even temporarily destroyed in unstable conditions. As a boom develops, the prospects of profits grow. Under these conditions there is a growing pressure on monopoly agreements, pressure which may increase until some banks break away, and the agreements degenerate into monopolistic rivalry for business. Once this rivalry develops, the whole banking system is drawn into the race for business, and a sudden inflationary pressure develops at just that moment when some check on bank advances is essential.

The Need for Government Controls.—How can Government control make any difference to this situation? In principle, Government control over private trading banks, exercised through a central bank, could do a good deal to make credit policy a stabilising instead of a disturbing force. There may, it is true, be little that Government control or any other influence on private banks can do to stimulate investment and therefore employment in times of depression. For if business firms do not consider investment profitable, there is nothing much that banks can do to make them borrow money for investment (though a policy of specially low interest rates may have some favourable effect). But what Government controls can do is to prevent banks from encouraging over-investment, and thus booms and inflationary developments; by controlling the volume of funds at the disposal of banks for lending purposes; by controlling the interest rates charged by banks; and, in general, by exercising control over their advance policy, both as regards the aggregate level of advances and advances for particular fields of investment.

These are the powers over credit policy which the Commonwealth Government, like any other Government in a capitalist country, must have for an effective full employment policy, either in the form of adequate Commonwealth Bank powers of control over the existing private trading banks or in some other form.

The 1945 Banking Legislation.—Such powers were in fact given to the Commonwealth Bank in 1941, when the Government, under the Defence power, imposed far-reaching wartime controls of banking, controls which substantially contributed to the successful management of war finance. When the war ended, the Government, following out the recommendations of the Royal Commission on Banking of 1936 in the light of the experiences gained during the war, adapted these controls for peace-time purposes in the Banking legislation of 1945.

Sections 18-22 of the Banking Act gave the Commonwealth Bank the power to freeze parts of the banks' investible funds by compelling them to deposit such funds on "special accounts" with itself.

Section 27 gave the Commonwealth Bank power to issue directives to the trading banks in relation to the overall level of their advances, and in relation to advances by classes of purposes.

Section 39 empowered the Commonwealth Bank to control the interest rates charged and offered by the trading banks.

And Section 48 gave the Commonwealth Bank a monopoly, jointly with State Banks, of all banking business of public authorities.

At the same time, the Commonwealth Bank Act transferred the control of the Commonwealth Bank from the old Board to a Governor directly responsible to the Commonwealth Treasurer.

This banking legislation of 1945 gave the Government extensive legal powers over the private banking system by central banking controls. But though far-reaching, the legislation is still far short of the Labour Party's declared objective of bank nationalisation. It may be asked, and has in fact been asked, by opponents of nationalisation: Why then is it considered necessary in 1947 to throw overboard the conservative policy of 1945 and carry through outright nationalisation of the trading banks?

II. THE INADEQUACY OF THE 1945 BANKING LEGISLATION.

Briefly, the answer is this: First, the effective use of the powers of control given to the Commonwealth Bank by the 1945 legislation, like all powers of Government control over private enterprise, presupposed a minimum degree of willingness to co-operate on the part of the trading banks. The attitude of the banks towards Commonwealth Bank control during the past two years has strongly reinforced the convictions held by some observers long before 1945 that this willingness was not forthcoming. Secondly, in the Melbourne Banking case of August, 1947, the High Court declared part of the Banking Act unconstitutional in judgments which seemed to lay other more vital parts open to the possibility of successful legal challenge. Thirdly, it seemed that the opponents of Government control were planning to postpone further legal challenge of the Banking Act to a moment when it would cause the maximum embarrassment. Faced with this threat, the Government could not afford to run the risk of having its powers over credit policy jeopardised at a critical juncture for the maintenance of full employment.

The Record of the Banks.—The record of the Australian trading banks even before 1939, which is examined in some detail in Appendix A of this pamphlet, is one of persistent bitter opposition to any form of central bank or Government control. The banks violently opposed the original establishment of the Commonwealth Bank in 1911 and co-operated with it only when, after the first World War, they had succeeded in ensuring their own influence over its policy. During the critical phases of the Great Depression they were able to put the Commonwealth Bank forward as their spokesman in opposition to the Labour Government's efforts to alleviate the depression by credit expansion. Late in 1931, when the Commonwealth Bank began to reassert its independence, they renewed their hostility towards it. Later still, they vigorously opposed any extension of Commonwealth Bank powers in their evidence before the

Royal Commission on Banking, and condemned the exceedingly moderate measures recommended by its predominantly conservative majority.

The Attack on the Banking Legislation.—During the second World War the trading banks co-operated loyally. But when it was proposed to embody the successful wartime controls in permanent legislation they launched a fierce publicity campaign against the proposals. With precisely the same arguments which are now advanced against nationalisation, they then attacked the 1945 banking legislation which some of their spokesmen now recognise to have been necessary and unobjectionable. They condemned it as “a serious threat to the freedom of the individual and to continuance of a system of private enterprise,” as “a form of regimentation not consistent with the democratic way of life,” and asked the public to “register their protest against any proposals having as their aim the political control of banking,” i.e., Government control of credit policy.¹

When the banking legislation became law over their protests the banks began to examine the possibility of challenging it in the Courts. One of them wrote in a letter to the Commonwealth Bank:

“We are most anxious to co-operate with your Bank to ensure the continuance of our present harmonious relations, but you will appreciate that our duty to our shareholders compels us to have regard to our legal position; therefore, we feel it necessary to advise you, with all due respect, that acquiescence or compliance on this Bank's part with any request or directions from you is not to be taken to import any contract with your Bank in the terms of the Act.”²

At first plans were made to challenge the controls by “special accounts” (Sections 18-22) and over the banking business of public authorities (Section 48). Both these were included in the original statement of claims lodged with the High Court on behalf of the Melbourne City Council. The banks did not formally associate themselves with that action, though it is difficult to see what interest the Melbourne City Council had in challenging the “special accounts” sections. Partly perhaps because of this incongruity, the reference to Sections 18-22 was struck out of the statement of claim before the action before the High Court began. But a challenge to the Banking Act as a whole was included as an alternative to the challenge to Section 48.

These open and behind-the-scenes activities of the banks made it clear beyond any doubt that they were opposed to central bank

¹ Bank of N.S.W., “Statement on the Proposed Banking Legislation,” Sydney, 2nd January, 1945.

² Quoted by Mr. Chifley in his second reading speech on the Bank Nationalisation Bill.

controls of the kind authorised by the 1945 legislation and were determined to defeat their purpose by every possible means. Nor is there any doubt that, given the attitude of the banks, even the far-reaching controls of the 1945 legislation might have proved difficult to safeguard against evasion and obstruction.

The Banks on Full Employment.—Not only have the banks persistently opposed any extension of Government control over credit policy, but they have also shown little enthusiasm for the objectives which such controls were designed to serve. Some of the opposition of the banks to sensible anti-depression policies during the Great Depression might be explained away on the ground that the wisdom of different policies was then still widely debated. But the banks are even now sceptical of such policies. Thus the Bank of New South Wales, in a recently published statement on “Australia's Changing Economy,” shows more concern about “the inherent difficulties in any policy of full employment” than about the importance of maintaining full employment. It also questions the present Government's policy of cheap money, saying that “low and falling interest rates in a period of full employment must add to the forces of inflation and discourage new saving.”¹ No doubt there are difficulties in a full employment policy and in the absence of effective price controls (which the statement also attacks) low interest rates may in certain conditions be inflationary. It is clear, however, that, in the view of the banks, full employment stands far lower in relation to other possibly conflicting objectives than it does with the people of this country and with the Labour Government. The banks cannot be expected wholeheartedly to co-operate in the Labour Government's credit policy, for the simple reason that they disagree on major issues with the economic and social aims of the Labour Government and of the majority of the people who support that Government.

These facts alone must have raised serious doubts in the Government's mind whether their earlier confidence in the adequacy of the 1945 legislation had not been misplaced. These doubts will have been turned into certainty by the judgment of the High Court in the Melbourne Banking case.

The Melbourne Case.—The High Court, by a four to one majority, declared Section 48 of the Banking Act unconstitutional. That decision itself was not unimportant, for the concentration of most of the banking business of public authorities in the hands of the Commonwealth Bank which that section would have ensured would have been a valuable aid in the effective co-ordination of public investment policies for full employment. The real importance of the Melbourne case, however, lay in the fact that the majority judgments gave new interpretations to the relevant clauses of the Constitution. Some of these suggested the possibility that

¹ Bank of N.S.W., “Australia's Changing Economy,” Sydney, May, 1947.

other far more important sections of the Banking Act, in particular Section 27 relating to powers over advance policy, and perhaps Sections 18-22, relating to "special accounts," might be successfully challenged in the Courts.

All these various sections formed parts of a coherent system of financial control in which each power buttressed others. We have seen the importance of controlling the aggregate level of advances. It is essential to realise that this control would be seriously jeopardised without the provision for compulsory deposit of some private bank funds on special accounts with the Commonwealth Bank. At the moment, special accounts serve a vital financial purpose in freezing some £300 millions of private bank funds. If these accounts were successfully challenged the banks would have available a huge and potentially inflationary reserve of cash which they would be anxious to use for expanded advances. Under such pressure, the Government would be severely handicapped in exercising its powers of control over total advances and in a crisis might find these powers substantially ineffective.

The declared hostility of the banks to the 1945 legislation made it virtually certain that they would take advantage of this possibility. Moreover, there was the risk that such a legal challenge would be timed so as to jeopardise the Government's control of credit policy just when speedy and energetic action might be essential to counteract a threatening depression. The Melbourne judgment, therefore, at one stroke, deprived the Government, not of its actual powers over credit policy under the 1945 banking legislation, but of the certainty that it would be able to use these powers when they would be needed.

The Shadow of Depression.—At the moment, certainty to be able to use credit powers is urgent and essential. There are signs that before long, perhaps early in 1948, the Australian economy may be subjected to serious economic trouble as a result of the international economic crisis that is developing. The unhealthy boom in the United States is threatening to get out of hand, and the world-wide dollar crisis is forcing Britain, Australia and other countries into severe import restrictions. We have no time to lose if we are to make sure of the Commonwealth Government's powers to cushion our economy against a threat of depression and unemployment. The only way of making sure, as we have seen, is to proceed immediately to legislation putting the trading banks under direct Government control by nationalisation.

It was in the belief that nationalisation of the trading banks was urgently necessary that the Commonwealth Government, on August 16th, 1947, announced its decision to introduce the necessary legislation into Parliament.

III. SPECIAL ADVANTAGES OF NATIONALISATION.

We have seen that bank nationalisation is necessary in the present situation of Australia in order to ensure adequate Government control over credit policy for the maintenance of economic stability and full employment. But this does not mean that bank nationalisation might not bring with it other advantages to the Australian economy.

Rationalisation.—The Australian trading banks have, in their ordinary commercial banking business, achieved a high standard of efficiency. But there is still room for improvement. In its very nature the competitive structure of several separate enterprises has meant duplication and uneconomical use of resources, of manpower, buildings, technical services and research. Efficient use of all these resources in a national enterprise will make possible a great increase in the variety of services at the disposal of customers as compared with those at present enjoyed by the customers of any one of the trading banks.

Regional Development.—Such an increase in the variety of services may be foreshadowed in the regional structure envisaged for the nationalised banking system. The Commonwealth Bank and other Australian Government banks have, on the whole, led the way in meeting a number of financial needs which private banks have avoided. One is the provision of long-term rural credit in place of private bank overdraft facilities to farmers; another is long-term loans for industrial development. Further developments in these important fields might well be made in such a way, through the proposed regional structure of a national banking system, as to promote regional financing based on regional community needs. It is not fanciful to see in such plans the basis for regional economic development as fruitful to Australia as the Tennessee Valley Authority has proved to be in the United States.

Ancillary Services.—Here, as well as in the provision of what Mr. Chifley has called "ancillary services" of technical advice and assistance to industry and primary producers, there are opportunities for the development of our banking system under public ownership which private banks have inevitably been slow to exploit. To quote Mr. Chifley, the banking system under public ownership

"will have the backing of the entire credit resources of the nation. It will be free from the cramping limitations of sectional private ownership which bid the private banks to serve this interest but not that interest, and to judge all business from the narrow standpoint of maximum profits for the smallest outlay. It will be able to take the longer-term view of projects requiring finance and, since the whole Australian economy will be its field, it will have the widest scope for initiative and for the spread of its investments."¹

¹ Second Reading speech on the Bank Nationalisation Bill.

Cheaper Credit.—There are some who support nationalisation primarily in the hope that a publicly owned banking system will be in a position to supply credit at much lower rates of interest. These hopes to some extent rest on an inadequate understanding of the requirements of sound management of any banking system, whether public or private. Even under public ownership the banking system, like any other public utility, will have to be conducted on sound accounting principles and ought not to look to subsidies from the Commonwealth Budget to cover current losses. At the same time, as we have seen, a nationalised banking system will not need to pursue profit as the primary objective of policy. This should make it possible to extend the present Government's successful policy of cheap money into the fields of short-term bank credit, such as overdrafts and advances, where interest rates under the auspices of the private banks have been slow to follow the general trend.

Long-term Social Effects.—Finally, we may welcome bank nationalisation as a measure bringing one basic industry of the country under public ownership and as a major step towards freeing the Australian economy from powerful financial monopolies.

Bank nationalisation will do both these things. But it is important to realise that bank nationalisation, taken by itself and in the present circumstances, is by no means evidence of any fundamental change in the somewhat conservative policy of the present Labour Government. Although the Labour Party has never renounced its ultimate socialist objective, no measures that the Labour Government has taken in its term of office so far could not have been taken by any Liberal Government with a socially progressive policy for a capitalist system. That applies equally to bank nationalisation. In fact, it can well be argued that bank nationalisation in the conditions of Australia in 1947 is a precondition of the survival of a private enterprise economy. For there can be no doubt that the Government is right in its belief that bank nationalisation in the present circumstances is essential to the maintenance of full employment; and he is an optimist who believes that free enterprise could survive another depression of the dimensions of 1929-32 in Australia. Only in a lesser degree would the other possible advantages of bank nationalisation which have been enumerated—rationalisation of the banking system, expansion of banking services and cheaper credit—benefit private enterprise in industry, trade, and primary production.

On a realistic view, the defenders of private enterprise—as free enterprise, not as monopolistic vested interests—have at least as much reason to welcome bank nationalisation as socialists.

The Prime Minister has made it clear in his Second Reading Speech that his intention is to stabilise and develop, not to reconstruct, the Australian economy. Socialists will find little contrast

between this attitude and the past record of the Labour Government. On that basis, radical changes in Government policy cannot—and should not—be sought in bank nationalisation.

IV. THE BANK NATIONALISATION BILL.

Immediate and Long-Term Plans.—The primary purpose of bank nationalisation, to provide the Government with adequate and secure powers over credit policy for full employment, can be achieved by the mere transfer of the trading banks to public ownership, without any major reorganisation of the structure of the Australian banking system. If some of the other benefits to the Australian economy which bank nationalisation can bring with it are to be realised, the structure of that system will sooner or later have to be adapted to its new role as an integrated national public utility. But these reforms, which will require much careful thought and preparation, are not urgent; they can be worked out and carried through at leisure over a period of years.

This division of the task into what is immediately necessary and what can be left till later underlies the Government's programme, as far as the public has been informed of it. The Bank Nationalisation Bill, therefore, which was introduced into Parliament on October 15, 1947, is confined to the transfer of ownership of the banks and to matters, such as the protection of the rights of bank employees, which are immediately involved in that transfer. On its longer-term plans for the reorganisation of the banking system, the Government has as yet said little in public and it must be assumed that many aspects of this problem are still undecided.

Transfer of Ownership.—The Bill provides that all Australian private banks, other than savings banks, shall be transferred to public ownership in the hands of the Commonwealth Bank and that private banking shall henceforth be prohibited in Australia. The actual procedure for transfer is complicated by the fact that the majority of shares of some of the Australian trading banks are held abroad. Two alternative forms of acquisition are, therefore, proposed: In the case of banks the majority of whose shares are held in Australia, the Commonwealth Bank will, in the first instance, purchase the shares and become in effect a majority shareholder; in the case of other banks, it will purchase the assets (and assume the liabilities) in Australia of these banks. Foreign business of Australian banks will be taken over and, if necessary, disposed of. The Bill envisages two alternative forms of purchase, either by voluntary agreement with the trading banks (or their separate shareholders) or by compulsory acquisition under the

Commonwealth's powers under Section 51 of the Constitution. It is hoped that most of the banks will avail themselves of the opportunity of voluntary agreement and a number of special inducements are provided; in particular, the capital sums paid in compensation, to the extent that they would be liable to taxation under existing law, will be exempt from taxation where acquisition is by voluntary agreement but not where compulsory acquisition is necessary. A flexible time limit is to be set by which voluntary agreements will have to be concluded; if no agreement is reached by the appointed date compulsory powers of acquisition will automatically come into force.

Compensation.—Compensation to shareholders or companies, as the case may be, will be "fair and reasonable" as the Constitution requires. Three alternative methods are envisaged: (a) The Commonwealth Bank may purchase the holdings of individual shareholders who are willing to sell at a price not less than the market value of these shares on August 15, 1947, i.e., the day before the Government's announcement of its decision to nationalise the banks. This method, which has already been used by the Commonwealth Bank to safeguard shareholders against a slump in the prices of bank shares, is unlikely to be used on a large scale. (b) The amount of compensation to be paid may be voluntarily agreed upon between the banks and the Commonwealth Bank. (c) Failing such agreement, the amount of compensation will be determined by a Federal Court of Claims, a new independent court of law, which is to be set up under this Act. That Court, which will consist of three senior judges to be appointed, like all judges, for life, will hear claims for compensation. As is usual for specialised courts like the Arbitration Court, its decisions on the amount which it considers "fair and reasonable" will be final.

Compensation will be paid by the Commonwealth Bank in the form of Commonwealth Government Bonds or in cash, as desired by the claimants. It will impose no financial burden on the Commonwealth budget or on the taxpayer, since the Commonwealth Bank holds more than enough Government securities which it can use for payment. Nor will the financial position of the Commonwealth Bank in any way be weakened since the net assets of the banks (over their deposit liabilities to the public) which it will acquire will balance the amounts which it will pay in compensation.

Fears that the payment of compensation will have direct inflationary effects are also unwarranted. For, even if payment is demanded in cash, that cash will still represent part of the personal capital of bank shareholders and they are not likely to spend it on current consumption. What many of them will want to do is to reinvest compensation in industrial and other shares more nearly equivalent to bank shares than Government securities. This might stimulate investment and cause some indirect inflationary pressure. But even this indirect pressure need not cause any

trouble. If necessary it could be countered by the usual methods by the Commonwealth Bank. Actually, it is not unlikely that, by the time compensation is paid out, the economic situation in Australia may have changed and such a stimulus to investment may be a welcome aid in maintaining employment rather than an inflationary threat.

Control of Credit Policy.—With the transfer of ownership, control over the credit policy of the banks will automatically pass from their shareholders to the Commonwealth Bank. The Bill provides that on the day on which the banks pass into public ownership the present directors will be replaced by new directors appointed by the Governor of the Commonwealth Bank. In another important respect, the mere transfer of ownership will strengthen Government control over credit policy. The Bill authorises full access for the Commonwealth Bank to all the accounts and other information concerning the financial position of the banks once they are taken over.

Banking Business.—In all other respects, however, nationalisation will make no difference to the conduct of banking business. The Bill explicitly requires the Commonwealth Bank

- “(a) to provide, in accordance with the conditions for normal banking business, adequate banking facilities for any State or person requiring them;
- (b) to conduct its business without discrimination;
- (c) to observe, except as otherwise required by law, the practices and usages customary among bankers and, in particular, to maintain strict secrecy within the law as to the affairs and dealings of its customers.”¹

Bank customers will be further safeguarded against discrimination by being given a legal right to appeal from decisions of local managers to a regional authority. Depositors with the present private trading banks will in no way be affected by the change. There is no conceivable reason why their money should not be just as safe with nationalised trading banks as the money of the far larger number of depositors with the Commonwealth Bank and Commonwealth Savings Bank.

Staff Provisions.—The Government has gone out of its way to provide the most meticulous guarantees to the rights and expectations of the employees of the private banks, so much so that the great majority of them will almost certainly obtain substantial improvements in their conditions of employment. Broadly speaking, the detailed provisions of the Bill provide that employees shall receive Commonwealth Bank conditions of employment, salaries, promotion, superannuation and other rights, wherever these are

¹ As summarised in Mr. Chifley's Second Reading Speech.

superior to their present conditions with the trading banks, but shall in no case and in no respect be worse off than they are at present.

The Bill makes no reference to the ways in which nationalisation may in the long run make possible a more efficient use of the skilled manpower of the Australian banking system. But it is clear that the Government believes that any such gains are less important than the established rights of present staff and must be secured gradually as the variety and scope of banking services are expanded.

Reorganisation.—This is as far as the Nationalisation Bill goes. It contains no provisions for the reorganisation of the Commonwealth Bank, which, no doubt, will sooner or later be necessary to fit its administrative structure to its greatly enlarged responsibilities. Mr. Chifley has foreshadowed an examination of the present Commonwealth Bank Act with this purpose in view. But in this, as in other respects, reorganisation is left over for later.

VI PROBLEMS OF A NATIONAL BANKING SYSTEM.

A Unique Task.—The task which will arise once the transfer of the banks to public ownership is completed, and plans must be made for the gradual reorganisation of the Australian banking system as a national public utility, is unprecedented in one major respect. Nationalisation of private banking systems has been carried out in several European countries since the war. But in all these countries, with the exception of France, bank nationalisation has been part of a general transition from a capitalist to a socialist economy. Moreover, none of these countries, again with the notable exception of France, has a tradition of political democracy as we understand it in Australia. The task in Australia will be unique in that the structure and policies of a national banking system will have to be developed within the framework of a predominantly private enterprise economy and subject to democratic Parliamentary control of the Government and public authorities, to the rule of law, and to safeguards for individual rights.

On the economic side, this raises three major problems for a nationalised banking system. The fact that all three have been, and are being, exploited by opponents of bank nationalisation in their publicity campaign should not tempt its supporters to close their eyes to the fact that these problems will arise and that they

will have to be energetically tackled if bank nationalisation is to yield its full benefits.

The Use of Credit Powers.—The first relates to the use to which the Commonwealth Bank's new and greatly enlarged powers over credit policy, and especially the power to grant or withhold advances, shall be put. The broad objective of credit policy under public ownership will be the national interest instead of, as under private ownership, shareholders' profit. A major aim of credit policy will, as we have seen, be to maintain economic stability at a level of full employment of all productive resources. But it is clear that the powers of granting or withholding credit on various terms could be used for other purposes which, in the view of the Government of the day, or even in the agreed view of all parties, would equally be in the national interest. They might be used to stimulate certain industries for regional development, or in favour of social priorities, such as housing or public utilities, by granting credit on terms more favourable than could be justified on commercial grounds.

On the face of it, there might seem everything to be said for the most extensive use of these powers for all such purposes. Yet there is a strong case for restraint in the use of these powers by a national banking system. Preferential treatment of this kind, involving the risk of financial losses which would ultimately fall on the Commonwealth budget and the taxpayer, would amount to concealed subsidies. Now there is nothing to be said against the established principle of subsidies for purposes of national importance. But subsidies should be open, not concealed. In all such uses as those mentioned above, it would be better for the Government openly to grant the preferred industries or public utilities the necessary subsidies which would enable them to obtain credit on ordinary commercial terms than that they should be indirectly subsidised by preferential treatment by the Commonwealth Bank. This principle, to which there will undoubtedly be legitimate exceptions in certain cases, can hardly be embodied in legal restraints on the Commonwealth Bank. But it should guide Commonwealth Bank credit policy.

A special case of this principle is the treatment of public corporations competing with private firms in any given industry. The argument that bank nationalisation will enable the Government to push to the wall private competitors of public corporations such as the T.A.A. by giving the latter credit on preferential terms is a favourite with opponents of bank nationalisation. As such it carried little conviction; for if a Government wishes to favour a public corporation over its competitors there is nothing to stop it from giving that corporation more than adequate direct subsidies without resorting to indirect discrimination through the national banking system. The latter practice would, in any case, be ruled out by the principle of non-discrimination between individual cus-

tomers which is embodied in the Nationalisation Bill. But it is worth noting that the general principle holds good in this case. In the interest of the integrity of the national banking system and of public accounting generally, discriminatory treatment by the national banking system should be avoided even where it is in the national interest.

Monopoly.—The other two problems arise from the fact that a nationalised banking system will be in a semi-monopolistic position. The contrast which the opponents of bank nationalisation are drawing between the present position and what it will be after nationalisation is, of course, a caricature. For, in the first place, the monopoly of the Commonwealth Bank will not be complete. State banks are not touched by the legislation and, although existing State banks are relatively small, they may expand their business and others may be founded. Since they will be publicly owned they will lack most of the objectionable features of private banks, though any large-scale expansion of State banks could again complicate the problem of co-ordination of credit policy—a difficulty, one of many, which our Federal Constitution inevitably places in the way of national economic planning.

What is more, competition between the Australian private trading banks has for many decades been conspicuous by its absence in all the fields that really matter. As the evidence summarised in Appendix A shows, the Australian trading banks have for long formed one of the most powerful monopolistic rings—in turn closely linked to other major monopolies—in this country. Nor have they had any qualms about the process by which even potential competition between them has been reduced by amalgamations which have brought down their number from well over 50 in the mid-nineteenth century to nine to-day (and it was to be eight to-morrow).

Lastly, there is a great deal of difference between a private monopoly impelled by the pursuit of profit to exploit its monopolistic position and a public one which is under no such compulsion.

However, there remain two dangers which any semi-monopolistic public enterprise confronts and which will have to be borne in mind in devising the permanent structure of a national banking system in Australia. One is that, with the disappearance of competition between several banks, customers will lose one potential safeguard against discrimination. The other that, for the same reason, administrative efficiency may suffer.

Discrimination.—The first of these problems has already been touched upon in connection with the relevant clauses of the Bill. The Commonwealth Bank will, as we have seen, be by law obliged not to discriminate between individual customers, and the customers will have a legal right to appeal against adverse decisions by local branch managers. For all normal cases these safeguards should amply suffice.

It should be realised how limited the safeguards provided by competition between private trading banks have been. In the great majority of cases, an application for an advance which is refused by one bank will just as certainly be refused by every other, if only because a businessman can rarely hope for better treatment by a strange bank manager than by the manager of his own bank to whom he and his financial position are personally known. While it is possible to cite cases where a businessman received an overdraft from one bank which had previously been refused by another, in most such cases the reason will have been that the first bank had reached its margin of lending and therefore temporarily not in a position to grant further credit; in this situation a nationalised bank with its ability to pool its resources would have granted the loan in the first place. In some such cases, the explanation may be genuine differences of judgment concerning the quality of the "risk." These are, by definition, doubtful cases in which the bank manager who takes a chance is not necessarily right. The hundredth case which fits neither of these explanations stands as good a chance of proper treatment under the appeal system provided for under the Bill as at the hands of the private trading banks.

There remains the fear which is being assiduously fostered by the opponents of nationalisation that discrimination under a Government-controlled banking system will be exercised on party-political grounds. The answer to this argument, if it needs an answer, is simple. No one has ever been able to cite one single instance of discrimination by the Commonwealth Bank or by any other public corporation of the Commonwealth. If a suspicion of political discrimination should ever arise, the aggrieved party will have recourse to the normal constitutional procedure in a parliamentary democracy of having the matter raised in Parliament, whereupon, if a *prima facie* case is made, an independent inquiry into the charge will be ordered. For the rest it is, in the last resort, on the alertness and sense of responsibility of the ordinary citizens of a democratic country that the integrity and decency of its political system depends.

Efficiency.—While fears of discrimination are largely illusory, the danger that in an immense integrated national banking system, exposed to little stimulus from outside competition, administrative efficiency might suffer is real. All large-scale administration, whether private or public, is liable to become bureaucratic, and the danger of red tape is particularly great in public administration precisely because it is subject to democratic control. It is their often overdeveloped sense of responsibility, their fear of embarrassing their Ministers in Parliament, which breeds in many public servants that excessive caution which can be their worst characteristic. Similarly, the very fact that the Government sets out to be a model employer puts it at some disadvantage compared with

the private firm. Beyond a point, security of employment and promotion can only be granted at the expense of some loss of efficiency of administration.

To say that these dangers exist for a national banking system—and it is not suggested that the Commonwealth Bank has hitherto proved less efficient than any of the private trading banks—does not mean that they cannot be countered. But they will only be countered effectively if they are recognised and deliberate efforts are made to devise means to stimulate and test efficiency in the administration of a national banking system. There is no reason, for instance, why a national banking system should not, in its general banking business, retain an element of competition between local branches. Again, it is important that promotion should be guided by merit rather than seniority—a matter on which the Government, in its anxiety to placate bank staffs, is already in danger of unduly tying its hands. For the same reason, it will also be desirable to decentralise the administrative structure of the banking system on a regional basis as far as is compatible with effective central control of credit policy.

Ultimately, the efficiency of any administration depends on the quality of its personnel. Since this will overwhelmingly remain the same after nationalisation of the banks, fears of deterioration can only be justified if it is believed that the officers of the private banks would refuse to give the same conscientious service as employees of the nation as they have hitherto given as employees of private shareholders.

VI. THE POLITICS OF BANK NATIONALISATION.

Political Conditions.—On the political side, the special character of the problems of a national banking system in Australia arises from the fact that it must conform to the requirements of a political democracy. This means that the transfer to public ownership, as well as the management of the system after nationalisation, must not only conform to the Australian Constitution and to the principle of democratic control through Parliament, but must also respect the rule of law and safeguard private rights and individual liberty under the law.

The opponents of bank nationalisation, whether out of genuine concern or as a demagogic device to hide their real interests, have chosen to attack bank nationalisation largely on these political grounds. Something must therefore be said on these matters.

Individual Rights.—We have already considered those aspects of bank nationalisation which might be said to touch on individual rights. The rights of shareholders, which will be meticulously respected by fair compensation; the rights of depositors, which are in no way affected by nationalisation; the rights of borrowers, which will be safeguarded against discrimination; the rights of all bank customers to financial privacy, which will be secured by law; and the rights of bank employees, which will be generously guaranteed.

The Constitution.—On the constitutional aspect, which is discussed in detail in Appendix B, only this need be said here: It is considered unlikely that a successful challenge to the Bank Nationalisation Act can be made in the High Court if the Constitution is interpreted in a manner consistent with past decisions. But if the Act, or any part of it, should be held unconstitutional in the Courts, it will not be because the framers of the Australian Constitution wished to bar the Commonwealth Government from ever nationalising the banks—there is every reason to believe that they never considered the matter. It will be because the ingenuity of lawyers has been able to interpret certain clauses of the Constitution, originally drafted with a wholly different purpose in mind, as if they laid down the law on this matter; and because the Courts, without precedent to guide them, were obliged to import some such hypothetical judgment into the written words of the Constitution.

Some say that the Commonwealth Government, by a constitutional referendum, should have obtained a change of the Constitution, which would have placed the constitutionality of bank nationalisation (or, for that matter, of the 1945 legislation) beyond all possibility of successful legal challenge. The Government is clearly entitled to introduce legislation on any matter which, on the best available legal authority, it believes to be within its powers. It is proper that, as a popularly-elected Government, it should act on that authority. For the framers of the Constitution, anxious to protect State rights, required constitutional amendments to be made by a procedure which enables a majority decision of the Commonwealth electorate to be vetoed by a minority. Had the Government chosen to seek an amendment of the Constitution, it would have permitted the cramping State jealousies of fifty years ago to influence and perhaps decide a popular issue of vital and entirely different importance to the whole of Australia to-day. In the last resort, it is for ultimate judicial authority to decide the validity of the Government's belief in its constitutional powers.

The Demand for a Referendum.—Much has been made of the demand for a non-constitutional referendum on bank nationalisation on the ground that the Chifley Government lacks a popular "mandate" for the proposed measure. The Government's answer to the charge that it lacks a "mandate" is that, in re-electing it in 1946, the people expressed their approval not only of the banking

legislation of the previous year but of the principle of effective Government control of credit policy, which can now be maintained only by nationalisation.

The Opposition's demand for a referendum has been an obvious tactical manoeuvre. The Opposition hoped that, in making a demand which they knew to be the duty of the Government to refuse, they would be able to present the Government in a bad light. That the Government had the duty to refuse the demand is clear as soon as the consequences of acceding to it are thought through.

If the Government, at the mere demand of the Opposition parties, had agreed to a referendum on a measure which it believed necessary and for which it believed it had a popular mandate, an inescapable precedent would have been set by which in future any minority Opposition would have the right to demand that any measure of a majority Government which it disliked should be submitted to the people by referendum. Since it is the job of Oppositions to dislike all Government measures of any importance, the inevitable consequence of such doctrine would be the elimination of Parliament from the Australian Constitution. In its place, we should have "direct democracy" by referendum, which all historical experience has shown to be the first step towards authoritarian Government in any large state. However much importance may be attached to the principle of the "mandate," it is clear that it is for the majority Government, not the minority Opposition, to decide whether, in any given circumstances, a new popular mandate is required. It was a majority Government decision, not the pressure of a minority Opposition, that led to the only instance where the non-constitutional referendum has been used in Commonwealth history, the two referenda on the conscription issue during the 1914-18 War.

Bank Nationalisation and Democracy.—Apart from these special arguments, the opponents of bank nationalisation have raised a general hue and cry condemning it in the most extravagant terms as the end of all liberty and the beginning of totalitarianism in Australia. It is hard to believe that anyone not blinded by embittered political partisanship can be deceived by these tales of woe. What all these horrifying analogies with Nazi Germany and Soviet Russia—which, incidentally, are drawn in apparent ignorance of the fact that the Nazis, for very good reasons, never touched the private ownership of the banks, while democratic France has led the way in bank nationalisation since the war—what these analogies so strikingly ignore is precisely the difference between Nazi and Communist totalitarianism and Australian democracy. It is true that bank nationalisation will increase the power of the Commonwealth Government in a special field. But that power will be the responsible power of a Government responsible to a democratically elected Parliament and accountable to the people every three years at the polls. Only those who have always despised Parliament and

feared popular Government can blandly ignore this decisive difference between democracy and dictatorship, a difference which remains of overwhelming importance even when all allowance is made for the weaknesses of our parliamentary and party system.

It is when we contrast these facts with the present position in which the banks are ultimately controlled by shareholders who are responsible to no one and who exercise their powers solely by virtue of their wealth that the singular hypocrisy of all this political propaganda is most apparent. The relative merits of a laissez-faire and a planned economic system may conceivably still be open to argument; the relative technical efficiency of a private and a public banking system may reasonably be debated. But when the argument is transposed to the political level, there is surely no possible room for doubt as to which is more in conformity with democratic principles: control by wealth or control by popular and responsible Government. On that level, the issue of bank nationalisation is soundly summed up in the popular slogan—The Banks versus the People.

Appendix A : The Record of the Banks

In any story of Australian banking over the last 40 years, three major lines of development stand out: the growth of the Commonwealth Bank; the growth of monopoly in private trading banking; and the persistent refusal of the private banks to accept the restraints necessary for a positive credit policy of the Commonwealth Bank or the Commonwealth Government. All three developments form the historical background to the present banking crisis.

THE ESTABLISHMENT OF THE COMMONWEALTH BANK.

In 1911, the Labour Government established the Commonwealth Bank as a public bank. The purpose, in line with Labour Party policy, was to meet the need for a people's savings bank and for some measure to break down the monopolistic understanding amongst the private trading banks by public competition. With an initial loan of £10,000 from the Treasury, the Bank set out to achieve these aims by opening, in 1912, a savings department, and in 1913 a general trading bank department.

At the same time the private trading banks were deprived of their previous right to issue their own banknotes, the note issue being vested, in 1910, in the hands of the Commonwealth Treasurer. The response from the banks to all these steps was "a very vigorous opposition"¹—an opposition which remained open until temporarily submerged by the emergency of the 1914-18 War.

Until the war, the threat of competition from the small Commonwealth Bank was a minor one. But the war rapidly enhanced the Bank's status. It became banker to all Australian Governments except those of Victoria and New South Wales; it acted as Commonwealth financial agent in wartime loan flotations; and, finally, it took the lead in the finance of wartime pools in wheat, wool, fruits and other commodities. By the end of the war, the Commonwealth Bank had emerged as the major Commonwealth financial institution: Government banker, note issue authority, People's Savings Bank, and competitor of the trading banks. The private banks no longer faced a minor threat. Not only had the Bank become a major trading competitor, but it had also opened up the prospect of central banking controls over the private banking system.

During the twenties the banks met that threat only too successfully. They were able to do this by two main developments: by a complete change in the structure and policy of the Commonwealth Bank to suit their own purposes; and by far-reaching amalgamations.

THE SUBORDINATION OF THE COMMONWEALTH BANK.

The first of these was achieved when, in 1923, the anti-Labour Bruce-Page Government succeeded the National Government with its strong Labour traditions. It was only a short while later that the new Government, in 1924, amended the Commonwealth Bank Act along the lines desired by the banks. The object of this amendment was to convert the Commonwealth Bank from a People's Bank or Government Trading Bank into a Bankers' Bank. As the Treasurer stated, the Government's intention was "the complete transformation of the Commonwealth Bank and the Notes Board into a central bank."² The critical change, however, was the removal of the Bank from Government control, executive power being vested in a Board of eight men, six of whom "are or have been actively engaged in agriculture, commerce, finance or industry."³ At one stroke the Commonwealth Government lost its chief monetary agent. From then until the Board was reorganised

in 1941 and abolished in 1945, the Commonwealth Bank was subject to varying degrees of control and influence by private banks. Though none of these was directly represented on the Board, personal links were always close, and the Bank functioned in intimate association with the private banks, especially in the critical years between 1924 and 1931.

The 1924 amendment eliminated the threat to the banks from trading competition by the Commonwealth Bank. The trading bank activities of the Bank were sharply curtailed, in line with the stated policy of the Board.⁴ Neither, however, was any move made towards the development of central banking functions. The Commonwealth Bank Chairman, with reference to the late twenties, admitted that "neither the trading banks nor the public accepted the Commonwealth Bank as a central bank."⁵ In effect, by the 1924 amendment, the Bank had been reduced to little more than a savings bank and financial agent of the Commonwealth, independent of the Commonwealth Government. Such had been the success of the private banks.

AMALGAMATIONS.

The second means by which the banks countered the threats of public trading competition and central bank control was a series of amalgamations after 1917. By 1931, these had reduced the number of private banks from 21 to nine and had created a close semi-monopoly ring in Australian banking. The main lines of this monopoly development were threefold. First, the banking structure changed from 21 mainly State-wide banks in 1917 to nine far-flung Commonwealth concerns in 1931. Secondly, the directorates of the banks became closely linked with outside monopoly concerns of Commonwealth rather than State importance. Thirdly, these larger banks were able, because of reduced numbers and expanded business, to make much more effective use of the already existing bankers' associations.

Of these three changes, the first two were by far the most important. The threat which faced the banks was on a Commonwealth level, not in the individual States. And it was only by becoming integrated Commonwealth-wide concerns that the banks were able to deal with that threat and, at the end of the twenties, to dictate policy to Commonwealth Governments.

The amalgamations were ultimately achieved as follows: Three by the Bank of New South Wales, one by the Commercial Bank of Australia, four by the National Bank of Australasia, three by the English, Scottish and Australian Bank, and one by the Commercial Bank of Sydney. Two features of these amalgamations are of special significance.

Broadly speaking, they were not amalgamations of direct competitors. For the most part banks whose business had hitherto been largely confined to one State absorbed banks operating in other States, so that the number of branches offering services in any area was little affected. Moreover, the amalgamations were made, not to prop up failing concerns, but because the banks found the "arrangement was to their mutual advantage."⁶ The whole trend towards Commonwealth-wide bank monopolies was, therefore, in line with the growing importance of the Commonwealth Government and with the similar growth of Commonwealth-wide monopolies in industry which, incidentally, came increasingly to be represented on the banks' directorates. The extent to which the enlarged banks became linked with other monopoly interests stands out in the list of directors of the various banks. By the close of the twenties, bank directors individually represented groups of large-scale Commonwealth enterprises, and collectively they accounted for all substantial industries. To cite one bank only, the directors of the Bank of New South Wales represented trustee companies, stock and station agents, insurance, foodstuffs, manufacturing, brewing, pastoral, produce and newspaper companies.

¹ Wood: *Borrowing and Business in Australia*. P. 165.

² Evidence of Sir Claude Reading to Royal Commission on Banking.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Report of Royal Commission on Banking. Para. 281.

It was under these interlocking Commonwealth-wide directorates that Australian banking business was carried on by the close of the twenties. At the same time, banking business, especially in Victoria and only to a lesser extent in N.S.W. and Queensland, was also subject to control by banking associations. In Victoria, the Associated Banks formed a ring of seven banks fixing—as their Chairman indicated before the 1936 Royal Commission—the main charges for their banking services by mutual agreement. Though some witnesses before the Commission stoutly asserted that the banks competed with each other, most of them were in the end forced to admit that “we are not in competition with other banks on rates.”⁷

THE GREAT DEPRESSION OF 1929-32.

It was with this semi-monopolistic banking system, enlarged to Commonwealth dimensions, hostile to central banking and positive Government credit policy, cautious in policy, conservative in banking practices, and subject to the overriding interests of bank shareholders, that Australia was hit by the Great Depression.

The major cause of that depression was undoubtedly the overseas slump which brought a rapid collapse of Australian overseas markets, export incomes and overseas borrowing. Nevertheless, domestic forces played some part. Even the conservative Royal Commission of 1936 attached “some responsibility”⁸ for it to the banks. “In the more prosperous times preceding the depression, they went with the tide and expanded credit . . . (and) at the onset of the depression . . . adopted a policy of contraction which intensified the depression.”⁹

This, however, was the minor part of the banks’ responsibility. Much more important was the fact that they flouted Government policy and dictated Government financial policy in the interests of their shareholders and of “sound finance” rather than in the interests of the Australian people. Because of the overseas origin of the depression, those measures were bound to be most important for good or ill which directly influenced Australia’s economic position in relation to the rest of the world. These measures were the deflationary policies of the Premiers’ Plan of 1931, designed to scale down costs and incomes in Australia; and the depreciation of the Australian currency of 1931.

THE PREMIERS’ PLAN AND THE BANKS.

It cannot be denied that the anti-depression measures of the Scullin Government, prior to the Premiers’ Plan, were fumbling, as were the policies of all Governments throughout the world at that time. But there is no doubt that its chief measures of credit expansion through the Commonwealth Bank were on sound economic lines. Nor is there any doubt that these expansive policies were defeated by the combined hostility of the Commonwealth Bank Board and the trading banks during the critical years 1930-31. This is the chief blame that attaches to the banks. The depression was heavier and longer, because, in defiance of the Government, the banks demanded and carried through an essentially self-interested policy of rigid deflation which, following upon their demands, was embodied in the Premiers’ Plan of June, 1931.

The role of the banks in this development needs little detailed comment. Quotations from their own statements adequately sum up their policy and their astonishing attitude towards properly constituted Governments, an attitude that varied from condescension to blatant dictation.

1. On February 13, 1931, the Chairman of the Commonwealth Bank Board informed the Commonwealth Treasurer:

“Subject to adequate and equitable reductions in all wages, salaries and allowances, pensions, social benefits of all kinds, interest and other

factors which affect the cost of living, the Commonwealth Bank Board will actively co-operate with the trading banks and the Government of Australia in sustaining industry and restoring commerce.”¹⁰

2. This corresponded closely with the attitude of the private banks somewhat earlier on December 19, 1930. With reference to the Commonwealth Government’s expansionary credit policy, a Statement of Bankers declared:

“The banks are unable to accept such a policy as sound, and can take no responsibility for the consequences which must inevitably follow unless there is a drastic curtailment of government expenditure and active co-operation by governments in the reduction of costs.”¹¹

3. A few days earlier, a Bankers’ Conference had been even more unambiguous in informing the Commonwealth Government of the subsidiary role which, in the view of the banks, was to be assigned to it:

“The banking finance of the Governments of Australia is carried on by the Commonwealth Bank, in conjunction with the trading banks. The position has become so difficult that the banks have been forced to adopt a definite attitude and lay down principles that all advances made to Governments should be approved by the Loan Council and arranged for by that body as the central authority.”¹²

With the Loan Council under a majority of anti-Labour Treasurers, this amounted to a proposal to eliminate the financial independence of the Commonwealth Government and to subject it to supervision by conservatives acceptable to the private banks.

Six months later, the Premiers’ Plan was adopted and rigid deflation was added to the misery of mass unemployment.

THE BANKS AND THE EXCHANGE RATE.

While the deflationary measures were forced on the Commonwealth Government in this way, the Australian currency was depreciated at the initiative of the banks. This depreciation is generally agreed to have been a major factor in the early recovery of the Australian economy. But it is clear that the banks can take no credit for that, and that for two reasons.

In the first place, Australia benefited from depreciation chiefly because she adopted that policy a full year before other countries followed suit, so that for a year she was relatively free from retaliation and competitive depreciation which would otherwise have rendered the policy largely nugatory. In any case, such benefits as depreciation conferred on Australia were inevitably obtained at the expense of the rest of the world. As one of the most competent observers, the late Lord Keynes commented at the time:

“Every country in the world has the same problem as Australia in some shape or form. If each attempted to solve it by competitive wage reductions and competitive currency depreciations, nobody would be better off. There is no exit along that route.”¹³

Secondly, and more important, the initiative of the banks was not due to any concern about the Australian national interest, but to their own profit interest. This became clear beyond all doubt in the evidence given before the Royal Commission, where all banks admitted that their action was forced on them by outside competition and that they responded to that competition by depreciation in order to retain their monopolistic hold on the foreign exchange business in Australia. The Chairman of the Associated Banks admitted that

“owing to heavy demands for London exchange, and the inability of the banks to supply them in full, the outside competitive market developed, in

⁷ Cf., e.g., evidence of Commercial Bank of Sydney to Banking Commission.

⁸ Report of Banking Commission. Para. 565.

⁹ Ibid.

¹⁰ Cited in Shann and Copland, *The Crisis in Australian Finance*. P. 182.

¹¹ Ibid. P. 71.

¹² Ibid. P. 84.

¹³ Review of Wallace-Bruce Report, 1932.

consequence of which, in January, 1931, the banks had to raise their rates by rapid steps to compete with it."¹⁴

The leader, the Bank of New South Wales, stated quite openly that their primary concern had been to "overhaul the outside market for foreign exchange."¹⁵

Depreciation, moreover, soon produced an untenable foreign exchange situation. What was needed was a responsible exchange policy which could restore uniform and stable exchange rates. Foreign exchange now began to accumulate to an undesirable extent. But it was not the banks, but the Commonwealth Bank that took the necessary corrective measure. The banks, having made heavy gains by depreciation, now raised a clamour that the resources of the Commonwealth Bank be used to protect them against losses from appreciation by purchase of the surplus exchange which they had accumulated. This the Commonwealth Bank agreed to do. But in doing so, it fixed its own rate, reducing the exchange rate to the point at which it has been held ever since. This involved the banks in some loss since they had to sell exchange purchased at higher rates. Without weighing this loss against the profits they had previously made by depreciation, the banks promptly accused the Commonwealth Bank of lack of faith because it refused to bear the whole of the loss with which the banks were faced.

RECOVERY AND THE ROYAL COMMISSION OF 1936.

This action by the Commonwealth Bank was the first hint of independent action by the Board in the history of its relations with the private banks. It was this which, for the first time since 1924, made the banks cautious in their dealings with the Commonwealth Bank. In the following years, the banks refused to accept any leadership by the Commonwealth Bank. The only recovery measure of some significance adopted by the Commonwealth Bank following the stabilisation of the exchange rate was the reduction of interest rates which was attempted in the years from 1931 to 1936. The banks opposed in the main even this first faltering step towards a positive domestic monetary policy for recovery; even the Royal Commission found that the banks had shown little disposition to co-operate with the Commonwealth Bank on this matter. The banks' unwillingness was not surprising; for co-operation on this measure would not only have involved some immediate loss of profit, but would also have conceded the right of the Bank to carry out central banking controls.

It was to investigate this latter question of the development of central banking, and in some degree to hold a post-mortem on the role of the banks in the depression, that the Royal Commission was appointed in 1936. To any suggestion of responsible control, the banks made their attitude clear before this Commission. Their evidence before the Commission clearly shows their refusal to accept progressive ideas in the field of banking or in the field of social policy. The Chairman of the Associated Banks, for instance, said: "My aim is to control my business without looking to the Commonwealth Bank for assistance." "I am quite satisfied . . . in regard to the . . . Commonwealth Bank, . . . so long as they do not compete more aggressively than they do at present." "It would be a most dangerous thing to empower the Commonwealth Bank to require reserve deposits."¹⁶ In the same strain, the National Bank boasted: "If a minimum deposit were required . . . (the witness) would see to it that he kept very much more than the minimum . . . (and) probably would defeat the object of the Bank in applying a minimum."¹⁷

14, 15 Cf. Evidence before Banking Commission.

16 Evidence by Healy.

17 Evidence by McConnan.

This attitude, along with the monopoly practices and the questionable depression record unfolded in the evidence, was too much even for the conservative Royal Commission. Their recommendations went strongly against the banks and in favour of a central banking system in which the Commonwealth Bank would have important powers of control over the private banks. Though the Commission's recommendations advanced the idea of central banking only some distance, their recommendations formed the organic basis of the Commonwealth's wartime powers adopted in 1941; and it is these powers which are at issue in the present banking crisis.

The 1936 Royal Commission did not discuss nationalisation of banking and its only Labour member, Mr. Chifley, was alone in entering a dissenting note recommending nationalisation instead of the control system favoured by the majority. One academic observer commented at the time on this attitude to nationalisation:

"The Commission's criticisms of the existing banking system, and the range of its proposed changes, raise the question of why, nevertheless, it would retain private ownership . . . Collectively (the Commission's) proposals are for a sort of public banking, in which it may well happen that the Government will take all the responsibility and opprobrium, while shareholders take the profits . . . Mr. Chifley made out, even in his three pages, a better case for nationalisation than the majority did for private ownership."¹⁸

18 S. J. Butlin, Review of Banking Commission Report, Australian Quarterly, Sept. 1937.

Appendix B: The Constitution and Bank Nationalisation

It has been said in relation to the United States of America that in modern times the court room is the field on which economic and social battles are fought and either lost or won. The truth of this proposition was well borne out by the conflicts over the New Deal in the United States,¹ and its application to the Commonwealth of Australia is becoming equally apparent. Already in the short period since the end of the war we have seen the destruction by the High Court of two important measures of a social and economic nature, namely, the pharmaceutical benefits scheme² and the control of municipal and governmental banking,³ whilst on the other hand the Court has upheld some part of the plan to nationalise the airlines⁴ and has confirmed the Commonwealth's post-war power to control inflation as a means of restoring the peacetime economy of the nation.⁵ The vital issue of whether the bank nationalisation plan will ever come into force may likewise be determined in the courts since, in view of the present Government's majority in Parliament, there can be no doubt that it will be passed by both Houses.

At the outset it should be emphasised that the concepts of constitutional validity and invalidity are peculiar to Federal systems such as exist in the United States of America, Canada and Australia where there is a division of legislative power between one central or Federal Government on the one hand, and several State or Provincial Governments on the other. In unitary States, like the United Kingdom, there is no room for such concepts—the Government is all-powerful and its legislative measures are not open to challenge by a court. If it wishes to nationalise the banks, the airlines, the cable services, the iron and steel industry or the gas works, it may do so without being hampered by restrictions on power or other constitutional limitations.⁶ But in a Federal State it is the duty of the courts as the arbiters of the constitution to ensure that constitutional powers and restrictions are not exceeded or infringed and that the Federal Government does not usurp the powers which have been vested in or committed to the States by the Constitution.

In the Commonwealth of Australia the Commonwealth has constitutional power over only a limited number of subjects set out in section 51 of the Constitution, and, if the Banking Bill does not fall within these, it is invalid. There are also certain restrictions on power expressly and impliedly imposed by the Constitution, which, if infringed by the Bill, will nullify its provisions wholly or in part. It may be convenient then to consider the validity of the Bill under two heads: First, whether it is within constitutional power, and, secondly, whether it violates any of the restrictions expressed or implied in the Constitution.

Before considering the scope and effect of the relevant powers and restrictions, it may be as well to look at the Bill in order to appreciate its substantial purpose.⁷ Summarised the Bill makes these provisions: First, it enables the

Commonwealth Bank to purchase or compulsorily acquire shares in any private trading banks incorporated in Australia or the United Kingdom (clauses 12, 13); second, it enables the Commonwealth Bank to take over, by agreement, or failing that, by compulsion, all assets in Australia of private trading banks wherever incorporated (clauses 22, 24); third, it provides for the payment of just compensation for the acquisition of shares and assets compulsorily acquired (clauses 15, 25), such compensation to be assessed by a specially created Court of Claims (clauses 26-36); fourth, it prohibits the conduct of banking business by private banks in the future (clause 46). The substance of the Bill is therefore acquisition, compensation, prohibition.

From the viewpoint of power the validity of the Bill depends on the application and construction of three heads of power contained in section 51 of the Constitution which authorises the Parliament "to make laws for the peace, order and good government of the Commonwealth with respect to:

(xiji) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;

(xx) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;

(xxxi) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.

The power of acquisition (xxxi) is not independent and absolute because, first, it only authorises the making of laws with respect to a compound conception "acquisition-upon-just-terms,"⁸ and, secondly, it is restricted by its own terms to acquisition for "any purpose in respect of which the Parliament has power to make laws." The first restriction has no application to the Banking Bill because it is well established by decisions of the High Court⁹ and the United States Supreme Court¹⁰ that a law is deemed to prescribe just terms if it provides for the assessment of compensation by a judicial tribunal such as the Court of Claims. But a major issue as to the effectiveness of the acquisition will turn on whether it is for any purpose for which the Commonwealth can make laws. Undoubtedly section 51 (xiii) gives the Commonwealth power to legislate with respect to banking and *prima facie*, therefore, the acquisition of bank shares and the assets of banks is justified by the Constitution. This is so whether the acquisition is exercised by the executive government or a corporation constituted by the Commonwealth. This point is established by the *Airline Case*¹¹ where the High Court affirmed the competence of Parliament to select the medium by which it exercises its legislative powers. It is not bound to content itself with regulating banking by private concerns; but may itself undertake banking or establish a corporation (as it has done with the Commonwealth Bank) to undertake all types of banking business. The Commonwealth Bank, like the Australian National Airlines Commission, is a statutory corporation deriving its existence and authority from the legislative power conferred by section 51, and it may exercise all powers incidental to the conduct of banking; thus it could buy premises in which to carry on business, or by agreement amalgamate with another bank whether public or private, or conduct a banking business which was acquired compulsorily. In short, therefore, there seems no substantial argument against the validity of those

1. *The Commerce Clause*, 59 Harv. Law Review 645, 883; Dean Alfange; *The Supreme Court and the National Will*.
2. *Attorney-General (Victoria) v. The Commonwealth* (1945) 71 Comm. L.R. 237. The adverse effect of this decision has since been overcome by a referendum which approved an extension of Commonwealth powers to cover social services.
3. *Melbourne Corporation v. The Commonwealth* (1947) Argus L.R. 377; 21 Aust. Law Journal 188.
4. *Australian National Airways Pty. Ltd. v. The Commonwealth* (1945) 71 Comm. L.R. 29.
5. *Dawson v. The Commonwealth* (1946) 73 Comm. L.R. 157; *Miller v. The Commonwealth* (1946) *ibid.* 187; *Morgan v. The Commonwealth* (1947) Argus L.R. 161; 21 Aust. Law Journal 25.
6. *Chalmers and Hood Phillips: op. cit.* p. 13 et seq.
7. The test frequently applied in determining whether a law is within power to ascertain its "pith and substance."

8. *Grace Bros. Pty. Ltd. v. The Commonwealth* (1946) 72 Comm. L.R. 269 per Dixon J. at 290.
9. *Andrews v. Howell* (1941) 65 Comm. L.R. 255; *Tonking v. Apple and Pear Board* (1942) 66 Comm. L.R. 77; *Johnson, Fear and Kingham v. The Commonwealth* (1943) 67 Comm. L.R. 314.
10. *United States v. Jones* (1883) 109 U.S. 513; *Monongahela Navigation Co. v. United States* (1893) 148 U.S. 327.
11. *Supra* note 4.

provisions of the Bill which enable shares and assets of private banks to be acquired by agreement or under compulsion.

It must be remembered, however, that the plan embraced in the Banking Bill cannot be effectuated by acquisition alone; it is fundamental to the exclusive power sought by the Government for the Commonwealth Bank that private companies or persons shall be prohibited from carrying on the business of banking in the future. It is in this respect that the Bill may be vulnerable, for the prohibition contained in Clause 46 can be justified only under section 51 (xiii) or (xx). Those provisions do not in terms confer a power to prohibit, but merely enable the Parliament to make laws with respect to such subjects as "banking," "the incorporation of banks," "foreign corporations," and "trading and financial corporations formed within the limits of the Commonwealth." It might be argued that a law prohibiting the conduct of banking business is not a law with respect to any of these subjects; rather that it is more properly construed as a law with respect to "the dissolution (as opposed to incorporation) of banks," or a law with respect to "exclusive government trading," or a law with respect to "prohibitions." Support for this view might be found in the High Court's decisions in *West v. Commissioner for Taxation*¹² and the recent *Banking Case*.¹³ Those cases impose substantial limitations on the construction of Commonwealth powers and some of the judgments adopt a narrow view of the scope of those powers. However, all members of the Court in the *Banking Case* agreed that section 48 of the Banking Act, 1945, which was ultimately held invalid, was a law with respect to banking, even though it purported to prohibit the conduct of certain kinds of banking business. Accordingly, it is unlikely that the High Court would hold clause 46 of the Banking Bill invalid on the ground that it is not in substance a law with respect to banking or any one of the other matters mentioned in section 51 (xiii) and (xx) of the Constitution.

The second ground of possible invalidity referred to above depends on the operation of restrictions which are expressed or implied in the Constitution. These restrictions are three: First, that a law imposing taxation shall not deal with any other matter, and if it does the provision with respect to the other matter is ineffective by reason of section 55 of the Constitution; second, that by section 92 of the Constitution "trade, commerce and intercourse amongst the States . . . shall be absolutely free" and any law of the Commonwealth or a State which infringes this section is invalid; third, the doctrine of implied immunity of States and State instrumentalities which prevents interference with the States because the Constitution creates a federal system of government under which the States and their residual legislative powers are preserved in force.

There is no real substance in the first restriction, namely, that the Banking Bill is a Bill imposing taxation. Clause 23 certainly does have the effect of imposing income tax on moneys received from compulsory acquisition of a bank's assets, whilst exempting from such tax any moneys received in consequence of the voluntary sale of those assets. But this section does not impose taxation; the tax is imposed under the Income Tax Acts already in force and the Banking Bill merely grants exemption from payment of that tax in certain events. In any case, a decision that the balance of the Bill is invalid on the ground that it infringes section 55 of the Constitution would merely involve the Commonwealth in re-enacting the invalid parts in a separate Act.

The difficulties involved in the application of the restriction on free trade and commerce between the States cannot be fully discussed in these pages, for no other group of words in the Constitution has been so frequently considered by the High Court or been so overlaid with explanations and distinctions. Suffice it is to say here that this is the rock upon which the Com-

monwealth's plan to nationalise the airlines and create a Government monopoly founded. The Australian National Airlines Act, 1945, was designed to exclude all persons other than the Commission from conducting inter-State air services, but the provisions which had this effect were declared invalid because they infringed the freedom of trade, commerce and intercourse guaranteed by section 92 of the Constitution.¹⁴ Of course the analogy between airlines and banking is not exact, but "commerce" in the wide denotation of the section must include banking;¹⁵ moreover, the Privy Council in *James v. the Commonwealth*¹⁶ treated postal services as coming within the phrase "trade, commerce and intercourse," though it saw no objection to the provisions of the Post and Telegraph Act, 1901-1923, which give the Commonwealth a monopoly of postal services and make it an offence for anyone else to carry letters for reward, whether intra or inter-State. The chief difficulty in attempting to apply section 92 to the business of banking is that banking has no State limits and no bank engages specially in inter-State trade. Accordingly, and particularly in view of the Privy Council's comments in *James v. The Commonwealth*, it seems unlikely that the Banking Bill will be declared invalid on that ground that it contravenes section 92. Moreover, a declaration of invalidity on that ground alone would be unsatisfactory, not only for the Government, but also for the banks, because the Bill would remain effective in respect of all but inter-State transactions and elements, and the banks would be deprived of their intra-State business.

Finally, it remains to consider the effect of the doctrine of implied immunity of States. This doctrine which originated in the United States of America¹⁷ was fully adopted by the High Court of Australia in favour of both the Commonwealth and the States in the early years of federation;¹⁸ it was rejected most positively by the High Court in 1920¹⁹, but since that date it has been resurrected²⁰ and appears in most vigorous form in the recent *Banking Case*. Indeed, the substantial decision in the *Banking Case* is that the challenged section of the Banking Act, 1945, because it dealt with the banking activities of States and State authorities, was a law which discriminated against, or interfered with, the States in the exercise of their governmental functions. The basis of the doctrine is well expressed in the *Banking Case* in the judgment of Latham C.J., who said that the supremacy of the Commonwealth Parliament "does not mean that the States are in the position of subjects of the Commonwealth. The Constitution is based on and provides for the continued co-existence of the Commonwealth and States as separate governments, each independent of the other within its own sphere." It would be only a step from this doctrine to say that the business of banking is so vital to all aspects of trade and commerce and other subjects within the competence of the States that interference with its free operation is an infringement of State rights and the wide variety of subjects over which the States have legislative power. Whether the High Court will take this step or not is at the moment a matter of conjecture; but although such a view is open to it without any fundamental reversal of prior decisions, it would involve a substantial further development away from the doctrine enunciated in the *Engineers' Case* and a further shift in favour of the States in the construction of the Constitution.

12. (1937) 56 Comm. L.R. 657.

13. *Supra* note 3.

14. *Australian National Airways Pty. Ltd. v. The Commonwealth* (1945) 71 Comm. L.R. 29.

15. *Ibid.* per Latham C.J. at 55-6, Rich J. at 71, Starke J. at 76-7, Dixon J. at 80-2.

16. (1936) 55 Comm. L.R. 1.

17. *McCulloch v. Maryland*, 4 Wheat 316; *Collector v. Day* 11 Wall 113.

18. *D'Emden v. Pedder* (1904) 1 Comm. L.R. 91; *Federated Amalgamated Railway, etc., Association v. N.S.W. Railway, etc., Association* (1906) 4 Comm. L.R. 483.

19. *Amalgamated Society of Engineers v. The Adelaide S.S. Co. Ltd.—The Engineers' Case*—(1920) 28 Comm. L.R. 129.

20. *West v. Commissioner for Taxation*—*supra* note 14.

In concluding this brief review of the constitutional position of the Banking Bill it may be relevant to mention the influence which may be exercised on the views of the High Court Judges by politically controversial character of the Bill. It has been said by the Court, time and time again, that in determining the constitutionality of any measure it cannot and will not have regard to political considerations which are within the sole province of Parliament. In the **Uniform Tax Case Latham C.J.** said:²¹ "... the controversy before the Court is a legal controversy, not a political controversy. It is not for this or any Court to prescribe policy or to seek to give effect to any views or opinions upon policy. We have nothing to do with the wisdom or expediency of legislation. Such questions are for parliaments and the people." In view of the fact that the same principle was expressed by **Rich J.** in the **Airlines Case**²² and by other members of the Court in **Miller v. The Commonwealth**²³ and **Dawson v. The Commonwealth**²⁴, it must be assumed that the Court will not have regard to the clear political nature of the Banking Bill when it is called upon to pass judgment on its validity. However, it must at the same time be appreciated that no human being is physically or mentally capable of keeping his views on such a vital matter as the Banking Bill in an air-tight compartment. The wide discretion conferred upon Judges of the High Court to determine the validity or invalidity of legislation permits the intrusion of individual attitudes into judgments and, although in fairness let it be said that such intrusion is more frequently unconscious than conscious, nevertheless the discretionary element is one which cannot be overlooked; indeed, it is more than probable that the ultimate fate of the Bill will depend on the way the six Judges of the Court react, consciously or unconsciously, to the substance of the legislation—in that small compass lies its future.

21. **South Australia v. The Commonwealth** (1942) 65 Comm. L.R. 373 at 409.

22. (1945) 71 Comm. L.R. 29 at 70.

23. (1946) 73 Comm. L.R. 187.

24. (1946) 73 Comm. L.R. 157.

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