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COMMENT

THE JUDICIARY JOINS THE CROWN AND THE PARLIAMENT IN THE NATIONAL CAPITAL

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The opening of the building for the High Court in Canberra by Her Majesty the Queen on Monday, 26th May last, has undoubtedly increased the interest of Australians in the Court and its place in the Australian scene.

The Constitution describes the Court as the Federal Supreme Court but says it is to be known as the High Court of Australia. As at federation, the Court was not the ultimate Court of Appeal for Australians, being itself subject to appeal, if special leave were granted by the Judicial Committee of the Privy Council.

Now, more than seventy years later, the Court, its decisions no longer subject to review by the Privy Council, is the final Court of Appeal in Australia. Whilst cases involving only the law of a State may be heard by the Privy Council on appeal directly made from certain courts of a State, what the High Court decides, none the less, binds all courts in Australia. Thus, the value in precedent of a decision of the Privy Council is capable of being removed by a subsequent decision of

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the High Court on the same point. Indeed, a decision of the Council inconsistent with an existing decision of the High Court would not become a precedent.

The period of time that the appeal to the Privy Council will remain possible from State courts on matters of purely State law is a matter of speculation. No case affecting the constitutional power of a State can be dealt with by the Privy Council. Only matters of private right not in any respect dependent on or involving consideration of federal law may be the subject of decision by the Council.

This predominance of the Court, even allowing for appeals to the Privy Council in the limited range of matters I have indicated, has greatly increased the significance of the Court in the life of the country.

That the Court now for the first time occupies and controls its own building underlines, and the building in physical form exemplifies, the supremacy and independence of the Court. Heretofore, it occupied State premises loaned to it, premises which did not mark it out as does the new building as the national court. Now it is not only housed in a separate and imposing building, but that building is in a most prominent position in the nation's capital.

The Court is not only, though predominantly, the constitutional court of the country, interpreting and guarding the Constitution: it is a general Court of Appeal from all the courts of Australia. It thus has the useful function of securing uniformity of interpretation of the laws of the States as well as of federal laws. Thus, it is able to forward the attainment of uniformity in the substantive laws of the country, and particularly the common law itself. By its exercise of this important function, the Court aids the sense of unity in the Australian people. Australians who now move freely from State to State have lessening need to observe differences in the laws they must obey in their changed places of employment or residence.

Doubtless the prominence which has come to the Court by its occupation of the building in Canberra will increase the public awareness of what it decides and of its impact on the lives of the citizens.

Let me close with a remark about the too oft repeated emphasis on the suggested isolation of the Court from the life of the nation said to result from its seating in Canberra. Those who propagate this myth rarely pause to examine the extreme isolation of those who work in highly populated cities. There, the daily travel to and from the work place frequently occupies up to one and a half to two hours a day. When the journey to the suburban residence is made at evening, only a decided effort by the citizen causes him to venture back into the city. Unless he has cultural activities in his suburb, he tends to remain at home, feted only by the television or the radio set. The isolation from one's fellows in a great metropolis is high complete. One's knowledge

of them and their doings is derived not from personal contact but largely, at several times removal, from what chances to appear in the daily press. In truth, there is less isolation in a city such as Canberra than is commonly supposed. For my own part, I do not think that Justices working in Canberra will be less in touch with the Australian scene than Justices working in a city such as Sydney or Melbourne. The gibe about the cocktail circuit in Canberra is shallow in the extreme. There is a great deal more to the city of Canberra than diplomatic entertainment. Beyond all this, the Justice is engaged in the strict discipline of the law, depending in large degree upon precedent and fairly well defined rules of legal interpretation.