

Concluding Remarks

Rt Hon Sir Harry Gibbs, GCMG, AC, KBE

It has become the custom to grant me the privilege, or perhaps I should say to impose on me the obligation, to make a few observations of my own on some of the matters that have been discussed at this our 11th Conference. I cannot in these brief remarks attempt to do justice to all that the speakers have said.

The Conference had four themes, the first of which concerned the forthcoming referendum. Surely no-one can doubt the correctness of Professor Flint's conclusion that the change proposed will be a substantial one, and not merely symbolic. I hope that it will also be agreed that the change need not and should not be made.

The argument for change advanced by Professor Craven rests on the assertion that the institution of the Monarchy is dead and valueless, and that the model proposed for the referendum will preserve the essence of the present Constitution and is, in any case, a good one. It is regrettably true, as Dr Partington pointed out, that there has been a tendency in Australia to discount or deny the value of our British inheritance. One hopes that it will be possible to inform the public, not only that the proposed model is flawed, but that the Monarchy serves a significant function in setting a standard of integrity and freedom from political bias which the Queen's representatives must follow and in providing a symbol of national unity which a President could not match.

As Sir David Smith has suggested, the unequalled century of stable democracy in Australia has been enjoyed under a constitutional monarchy. Sir David also pointed out that the republican claim that Australia should have an Australian Head of State in place of a foreign Queen misses the point that a President would take the place of the Governor-General, not that of the Queen.

Professor Craven, perhaps realising that the proposed model, described even by some of its supporters as significantly flawed, will not find general acceptance, argued that the present model put forward by the Convention should be accepted for fear that its rejection might result in a Constitution for Australia which he would regard as calamitous. This argument involves the assumptions (neither of which may be proved correct) that, if the present model is rejected, a less attractive model would be put to a referendum and passed, and the further argument that, if the present model is approved, no other model would thereafter be put forward at a future referendum. Professor Craven is to be respected for his earnest and eloquent argument, but the argument itself is a council of despair; it is analogous to be suggesting that one should rush into certain danger to avoid perils which may never come to pass.

As to the proposed Preamble to the Constitution, neither Mr Warby nor I could find much good to say about it.

Another topic, that of sovereignty, provides a contrast to the republican argument that we should get rid of a so-called foreign Queen. As Mr Ray Evans has shown, our governments have allowed organs of the United Nations which are alien to Australia, and have no traditional relationship with us, to intrude into our affairs and thus to suborn our sovereignty. This is a grave issue which our governments should be induced to remedy.

The idea of a Bill of Rights is plausibly attractive. However, as Mr Gary Johns has said, a

Bill of Rights is undemocratic and would allow judges to usurp the place of the legislature. Jeremy Bentham described the idea of natural rights as “nonsense on stilts” and Mr Justice Meagher has proved the truth of Bentham’s description with more wit than Bentham showed.

Finally, there was discussion on federalism in its various aspects. Dr Forbes described the unsatisfactory position into which the federal courts have drifted; not the least of the disadvantages of the present system is that unqualified persons may, for political reasons, be appointed to the federal bench by way of prior appointment to a federal tribunal, since such appointments are not as closely scrutinised as those to the State Supreme Courts. Professor Mackerras has argued that the proposals to amend the election of Senators, with the hope of removing the independents, are neither necessary nor desirable – nor, he would add, constitutional. I am not convinced that it would be unconstitutional to divide States into wards for the purpose of senatorial elections, but I am a firm believer in checks and balances. Unfortunately, most people, and I suspect many politicians, do not know what checks and balances are.

Finally, Professor Ayres spoke on that greatest of Chief Justices, Sir Owen Dixon, and his views on federalism, including his opinion that the judgment in the *Engineers’ Case* was badly written and defective in much of its reasoning. It was that case which proved to be a prime cause of the decline of federalism in Australia.

The Conference has been a stimulating and, again, a successful one. I thank all the speakers, and also all those who have attended, for their contribution to these proceedings.