Concluding Remarks

Rt Hon Sir Harry Gibbs, GCMG, AC, KBE

I think you will agree that we have had another successful Conference.

On the subject of Sovereignty, we had four strong papers from Mr John Stone, the Honourable Peter Walsh, the Honourable Max Bradford and Mr Ray Evans. Those papers left us in no doubt that by unwisely entering into treaties which have not advanced the national interest, our governments have surrendered parts of our sovereignty or, as Mr Evans would prefer, have weakened our will to defend our sovereignty. The damaging effect has not been merely trivial, as Mr Evans' discussion of the *Kyoto Protocol* has shown. Mr Bradford's paper on the New Zealand experience with ILO supports this view, and the Australian experience will very likely have been the same as that of New Zealand.

There are two changes to the Constitution that are highly desirable, although I am not confident that either change will be made in my life time. It should be provided that no treaty can be ratified without the approval of the Senate, perhaps by a 2/3 majority. The external affairs power should be limited to prevent the use of that power simply to give effect to international agreements, except with the consent of the States. In the absence of amendments of this kind, at least it is to be hoped that governments will ensure that no treaty is ratified without proper consideration by a Parliamentary Committee whose duty will be to ensure that no treaty will be entered into unless it is in the interests of Australia to do so.

On the topic of mandatory sentencing, we had two well balanced papers by Ms Ruth McColl, SC and the Honourable Denis Burke. In spite of Mr Burke's impressive argument, I remain of the view that as a matter of principle it is wrong to provide for a sentence that must be applied irrespective of the circumstances of the case. In my opinion, mandatory sentences are equally wrong in principle when applied to cases of murder or drink driving as in any other cases. It is easy to suggest circumstances which in the case of any crime should lead to a sentence less than that mandated by law.

The absence of judicial discretion in sentencing will inevitably lead to injustice in some cases. However, as Mr Burke showed, this will not always be the case, and in some cases in which mandatory sentences were imposed, the sentences were appropriate and the nature of the case was misrepresented by the media.

It is a matter for regret that it should be thought that judicial officers imposed sentences that are capriciously low, but if this is the case, a bad system should not be imposed because a good one is working badly. One remedy lies in the more determined prosecution of appeals with, if necessary, amendment to the law to make such appeals more readily available. Also more care should be taken to ensure that only persons suitable for appointment should be elevated to the bench.

Other papers referred to two anniversaries of events that took place in November. The first of these was the anniversary of the referendum that defeated the move to a republic.

Sir David Smith gave us some important details of the campaign against the change proposed by the referendum and informed us of the obstacles which the advocates of the "No" case had to surmount. Those obstacles included the bias of the media, and the extent of the bias was demonstrated clearly by Dr Nancy Stone, whose analysis of material in *The Australian* and *The Age* indicated how the news, comment and opinion in those papers heavily favoured the republican case.

Professor Malcolm Mackerras gave us an interesting analysis of the voting. One can only

speculate as to the reason why those who supported a republic were generally people who were wealthier or lived closer to city centres than the “No” supporters.

The second anniversary was that of the dismissal of the Whitlam government. Mr Peter Ryan's paper, read by Mr Purvis, gave us a frank commentary, in his own inimitable style, on some of the persons involved in those events.

The final topic was the last 100 years of Australian history. As we expected, Professor Geoffrey Blainey, AC gave us a stimulating and indeed inspiring address. It should be widely read, particularly by those who teach our young to denigrate Australia and to believe that Australia was uniquely racial, and that our treatment of Aboriginals was uniformly inspired by malice.

May I add a footnote in relation to the expression “the black arm-band”; before World War Two it was a requirement that black arm-bands should be worn with judicial robes during periods of court mourning. I think that I have read that the same was true of military uniforms, at least in some circumstances.

Professor David Flint also lived up to our expectations with his account of a century which, as he stated, was one of success but not of perfection. He too gave us examples of the grossly exaggerated criticisms of our treatment of the Aboriginals, although he recognised that the clash of cultures had tragic consequences for them. I should point out, what Professor Flint implicitly recognized, that the fact that the High Court has in effect re-written parts of the Constitution is not an isolated phenomenon. The same has been true in the United States and Canada. I shall not attempt to explain why this has been so.

I am not paying a mere formal courtesy to Mr John Stone and Dr Nancy Stone when I thank them for all that they have done in organising this Conference. Without their efforts the Conferences would not be the successes that they have been. I thank you again, John and Nancy Stone.

And thank you all; by your attendance you have contributed to our success. I hope to see you at our next Conference.