

Concluding Remarks

Rt Hon Sir Harry Gibbs, GCMG, AC, KBE

I hope that we all agree that this has been another successful conference. It would be pointless for me to attempt a summary of the excellent papers which we have heard but there are a few remarks which I wish to make.

The papers by Mr Harry Evans on *The Senate Today* and by Professor Catley on *The New Zealand Connection* – each by a man with a special insight into his subject – show, by the contrast that they provide, how fortunate Australia is to have an Upper House of Parliament which does not necessarily reflect the composition of the Lower House. In other words, the checks and balances in our Constitution are effective and we have seen in New Zealand the consequences when a Constitution lacks those checks and balances. The picture of New Zealand which has been presented to us is a sad one and it convinced me, at least, of the difficulties of accepting New Zealand into our federation, assuming that New Zealand wished it.

Of course we have troubles of our own; they include the continuing claims for Aboriginal separatism and the state of the laws regarding industrial relations and the administration of those laws. It is disturbing that in both these contexts there is a perception that some federal Judges decide according to their ideological biases rather than according to law. It tends to destroy respect for the law in general, and the Federal Court in particular, that perceptions of this kind should exist, and it would indicate a most serious departure from judicial probity if the perceptions are well founded. This should be a matter of concern to those many Federal Court judges whose reputations are beyond reproach.

The unfortunate state of the law regarding native title has already cost Australia much in monetary terms, but what is worse is the divisive, indeed corrosive, effect of the Aboriginal issue on the unity of the nation. We have had some informative papers on this topic. If the nation survives, our successors in 100 years time will probably view with incredulity some of today's decisions on native title.

Dr McGrath's reference to the beneficial effect which some judges would give to the amendment of s.51(xxvi) of the Constitution, which deleted the reference to 'the aboriginal race', provides us with a clear warning of what judicial activism might do if we were unwise enough to enter into a treaty with the Aboriginal people.

Professor Pincus has told us of the economic benefits of the fiscal imbalance which is contributed to by the system of Commonwealth grants. That benefit has to be balanced against the diminution of governmental responsibility that results. We may differ on the question where the balance lies.

The controversy as to whether Australia should be a republic continues, and besides the papers on the position of the Crown and the Governor-General we have heard Professor Flint's convincing criticisms of the proposal that a plebiscite should be held as a device to advance a determination of the republican issue.

Once again we are deeply indebted to John and Nancy Stone, without whose efforts this conference would not have been held. I ask you to show your appreciation of their unflinching support.

Thank you for your attendance. I hope to see you all at the next conference.