

Concluding Remarks

Sir David Smith, KCVO, AO

As I stand here attempting to follow the tradition established by our founding President, Sir Harry Gibbs, in closing our conferences with some concluding remarks, I am conscious of a number of factors.

The first is that I have been greatly honoured by this Society in being invited to succeed the late Sir Harry as your President. The second is that Sir Harry left some enormous footprints on this Society, its conferences and its publications. The third is that I have no hope of filling Sir Harry's shoes, so I shall not attempt to do so – I can only promise to do my best.

We were privileged to have not one but two High Court judges address our conference. Justice Dyson Heydon delivered the inaugural Sir Harry Gibbs Memorial Oration on Friday night, and he was followed next morning by Justice Michael Kirby (by video); the Honourable Tom Hughes, the Attorney-General who had recommended Sir Harry's original appointment to the High Court; Mr David Jackson, QC who had served as associate to Mr Justice Gibbs, then of the Queensland Supreme Court; and Mr Julian Leaser. Each spoke about different aspects of Sir Harry's life and work as lawyer, barrister, friend, judge and Chief Justice: together they gave us a wonderful word picture of a courteous and gentle man, an exemplar in the law, a judge of high principle, and a stout defender of the nation's Constitution and its institutions.

Our second conference theme – a Bill of Rights – was also one that was dear to Sir Harry's heart. Professor James Allan drew on the Canadian experience, and Mr Ben Davies on the experience in Victoria, to remind us of the difficulties in drawing the line between competing rights of individuals, of the dangers to parliamentary sovereignty at the hands of unelected judges, and of the risk to federalism from centrally-appointed judges. We also saw a whole new meaning has been given to the words "independent chairman".

On Saturday night Dr Janet Albrechtsen drew this section of our conference to a close by reminding us of the pernicious strategy that has been set in train to slowly give us State and Territory charters of human rights that would induce us to accept the ultimate goal – an entrenched Bill of Rights in the federal Constitution. It is my earnest hope that this Society and its members will respond to this latest threat to our system of parliamentary democracy and to our individual rights as citizens.

The rest of our conference programme was devoted to other causes that were of special interest to Sir Harry – Professor David Flint on the constitutional role of the Sovereign; Mr John Stone with a post-script to the constitutional referendum; Mr Stuart Wood with some spirited observations on the *Work Choices* case currently before the High Court, and on the judges hearing it; Dr Gary Johns on the emerging and very welcome changes in Aboriginal policy; and Mr John Roskam with a reminder of what, if anything, remains of the notion of federalism within the Liberal Party, and why.

I have commented somewhat more briefly than Sir Harry would have done on the papers presented to us because I want to use the rest of my allotted time to say something about one of his responsibilities as Chief Justice that has so far not been mentioned. I refer to his role as Chairman of the Council for the Order of Australia – the body that is charged with recommending the half-yearly honours lists of awards in the Order to the Governor-General, who is also Chancellor and Principal Companion of the Order.

The Council consists of members nominated by the Australian government, members nominated by the State and Territory governments, and *ex-officio* members – the Vice-President of the Federal Executive Council, the Chief of the Defence Force, and the Deputy Secretary of the Department of the Prime Minister and Cabinet.

When the Queen established the Order in 1975, the Chief Justice of the High Court was also an *ex-officio* member of the Council and served as its Chairman. Sir Garfield Barwick was the first Chairman, and he was succeeded in turn by Sir Harry Gibbs and Sir Anthony Mason. As Official Secretary to the Governor-General I was also Secretary of the Order of Australia and Secretary to the Council for the Order, and in that capacity it was my privilege to work closely with those three Chief Justices in their respective roles as Chairman of the Council.

I have no wish to make comparisons. All three of them devoted much time and energy to the task, and it was a demanding task which each of them discharged diligently and conscientiously. The success of the Order of Australia owes them much. Sadly, their successors on the High Court have been unable or unwilling to accept this additional burden, and I believe that, as a consequence, the honours system is the poorer.

As I have said, I make no comparisons, but as this conference has been organised as a tribute to Sir Harry Gibbs, I wish to add to what has already been said about him and to place on record his work as Chairman of the Council for the Order of Australia.

He always treated me and the members of my staff in the Australian Honours Secretariat with great courtesy. Whether we sat alongside him during meetings of the Council, or called on him in his chambers at the High Court to settle final details of a list of recommendations to go to the Governor-General and, in those days, to the Queen, he listened patiently and gave us whatever time we needed.

He obviously spent many hours reading the several hundreds of nominations and in preparing for each meeting of the Council. At each meeting he guided the Council gently and politely, steering a course through the competing interests of the Commonwealth, State and Territory representatives – indeed, it was an example of co-operative federalism in action.

But above all, he was determined to see that each nomination was considered on its merits. If the discussion around the table suggested that full credit was not being given to some aspect of the nominee's achievements, he would draw the Council's attention to it. If the discussion looked as if it was heading off at a tangent, he would bring the members back gently but firmly to the issue at hand. If the level of award being considered was out of kilter with past awards for similar or like services, he would bring this to the Council's notice. If the decision was to defer or reject a nomination, he wanted to be sure that that was the right decision.

In all of this Sir Harry's main concern was to ensure that each case was considered justly and fairly and properly. To him, each nomination was a pen picture of the achievements of a fellow Australian and of their contributions to our society, and he took great pains to ensure that every one of them received a fair go.

As always, we are indebted to John and Nancy Stone for yet another interesting, timely and enjoyable conference, and on your behalf I thank them most sincerely.

I wish you all safe journeys home.