Introductory Remarks

John Stone

Ladies and gentlemen, welcome to this, the eighteenth Conference of The Samuel Griffith Society, and our second in Canberra.

As you all know, this Conference will have a special place in the annals of our Society, having been the first to occur since the death of our former President, the highly respected and warmly regarded Sir Harry Gibbs.

Much of our proceedings this weekend is dedicated to Sir Harry's memory, beginning with last night's splendid inaugural Sir Harry Gibbs Memorial Oration by His Honour, Justice Dyson Heydon of the High Court of Australia. The large attendance, including members and others from all mainland states of Australia, testified to the regard and affection in which Sir Harry was held by all who came in contact with him. They came last night to pay tribute to him, and needless to say given Mr Justice Heydon's eminence, they were not disappointed.

His Honour's address, the written version of which ranges somewhat further than the polished shorter version that he delivered to us at dinner last night, will be published in full in Volume 18 of our Proceedings, *Upholding the Australian Constitution*. It displayed that characteristic mix of wit, scholarship, felicity of expression and respect for all the best traditions of the law, for which Justice Heydon has rightly become renowned. On behalf of you all, I take this opportunity of reiterating the thanks that were so ably delivered to him last night by Bill Hassell.

In the course of preparing these introductory remarks, I had occasion to look back at those I made just over a year ago at our Coolangatta conference. Referring then to "the swelling tide of ignorant centralism rushing out of Canberra", I noted that "even the Prime Minister" – for whom, as I have made clear on the public record, I hold a high regard – "has not been immune from this disease". Hardly had that Conference concluded on April 10 than the Prime Minister, in what can only be described as an appalling speech to the Menzies Research Centre entitled *Reflections on Australian Federalism*, both confirmed his non-immunity and gave proof that the disease was far advanced.

Since then, the government's most important legislative endeavour has been directed to its *Work Choices* legislation (and accompanying regulations). That legislation purports to employ the corporations power of the Constitution (section 51(xx)) not only to do what might previously have been done under the conciliation and arbitration power (section 51(xxxv)) but also to do a great many other things which were clearly outside the ambit of the latter power.

Earlier this month I spent four days here in Canberra attending (with a little time off for the Budget) the High Court hearings of the case that the State and Territory governments, and some major trade unions, have brought against that legislation. As you know, those hearings concluded on 11 May, and the Court has reserved its judgment. I am confidently informed on all sides, by persons much more learned in the law than I, that the plaintiffs will lose their case and that the Commonwealth will prevail. To which I can only reply, as I have done elsewhere, that I have too high an opinion of most of the Justices to believe they would actually commit such a monstrosity as that would entail.

The viewpoint of those who dismiss my faith in that respect is founded, as I understand it, in the fact that there have been some past precedents (emanating from both sides of politics) in the use of the corporations power by the Commonwealth to enact legislation that might otherwise have been thought to be beyond its constitutional powers. Indeed, as I listened earlier this month to the arguments of counsel for the Commonwealth, the Solicitor-General, Mr David Bennett, QC it seemed to me that his argument boiled down to saying that, the Court having previously given the Commonwealth an inch, it was now incumbent upon it to give it a mile.

Some years ago, when commenting upon the outrageous abuse by the Commonwealth of the external affairs power of the Constitution (section 51(xxix)), Sir Harry Gibbs said that successive High Court interpretations of that power had been such that one could now almost replace the words "external affairs"

with the one word "anything". Had Sir Harry been alive today, I believe that he would have seen this latest grab for centralist power by the Commonwealth as further cementing that outcome – at least in so far as "anything" involving a corporation was concerned.

That brings me to our program, the first four papers in which today are devoted to Sir Harry's life and work. As I am chairing that section, I shall reserve any further remarks on those papers until, shortly, we come to them.

This afternoon, and again over dinner this evening, we shall have two papers, and an address, directed to the "progressive" lawyers' grab for further power for themselves via the enactment of Bills of Rights in one form or another. That too, you will recall, was a topic on which Sir Harry Gibbs's views are firmly on the record in Volume 6 of our Proceedings. We also look forward to a paper on the role of the Sovereign, and tomorrow, three papers on, respectively, the *Work Choices* legislation, the Aboriginal question, and the matter of federalism and the Liberal party, on which I touched earlier in these remarks.

It now remains to get the program under way. Our first paper this morning, *Sir Harry Gibbs Remembered*, will be delivered by video. Its author, His Honour Justice Michael Kirby, who has a prior and unbreakable commitment this weekend in Fiji, has specifically asked me to say how much he regrets his inability, as a consequence, to be present to deliver his remarks in person. For my part, let me only express my gratitude to Justice Kirby for undertaking to speak to us, albeit from a distance, this morning. On the assumption that this technology will work, let us now proceed to hear him.