

Concluding Remarks

The Rt Hon Sir Harry Gibbs, GCMG, AC, KBE

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I have been asked to sum up the proceedings of this Conference. My remarks, being necessarily brief, cannot do justice to the impressive papers and thoughtful discussion to which we have listened.

The Conference began with a scintillating after dinner speech by Mr Peter Coleman, who drew vividly to our attention the attempt that is being made to force upon society a stifling conformity of opinion and action under the guise of promoting diversity.

We pride ourselves on being a free society, but people have been made to suffer by various means, within and outside the law, for daring to express or to act upon opinions which are not in conformity with the ideology that is accepted as correct. Mr Coleman's address, in spite of its wit, would have been deeply depressing if he had not discerned evidence that the commonsense of the community is beginning to react against this attempt to make individuals conform in belief and action to the new orthodoxy.

Dr Howard, Professor Winterton and Professor Coper engaged in an instructive debate on the scope of the external affairs power. Since I have previously expressed my views on this subject I shall content myself with mentioning the questions that were raised in the course of the debate. Is there any practicable alternative interpretation of s.51(xxix) of the Constitution which confers this power? Can one rely on public sentiment and political convention to confine the exercise of the power so that it does not destroy federalism? If the scope of the section were restricted by amendment, would it impair the ability of the Commonwealth to participate fully in the conduct of external relations? Is the amendment suggested by Dr Howard one that would satisfactorily confine the extent of the power without unduly hampering the power of the Commonwealth to enter into treaties?

There was unfortunately no discussion of the question whether the suggested difficulty that the Commonwealth would face if it lacked the present power would be met by returning to the former practice of making treaties containing the so-called federal clause. There was a further question which I think admits only of an affirmative answer. That is whether the power of the Executive to make treaties should be subject to the control of the Parliament and in appropriate cases of the States.

Messrs John Hirst and Bruce Knox, who discussed the report of the Civics Expert Group, revealed to us the truly appalling deterioration of our education system. It is surely deplorable that our children are left ignorant of our history, which at least as far as the institutions of government are concerned includes the history of Great Britain, and it is a national scandal that students should be taught to look with shame, rather than pride, on the achievements of Australians.

Mr Hirst detected a change of the cultural mood which gives room for hope – a view similar to that of Mr Coleman. Mr Knox was less optimistic. Whoever is right, nothing is more important to our future than that the methods, values and content of our education system should be restored to rationality.

Mr Hirst suggested that the Constitution should be rewritten to make its terms reflect present practice. I can see no objection to the removal of provisions that are entirely obsolete, and of course there are some provisions, such as s.90, which I would like to see amended, but there are real dangers in trying to encapsulate in the fixed words of a Constitution conventions which are flexible and developing. One can imagine, for example, what effect judges of a particular philosophical attitude would give to a provision that read, "There shall be a Prime Minister".

My own contribution was to point out the unfortunate results of the present interpretation of the words "excise duty" in s.90 of the Constitution. Encouraged by the recent judgments of three Justices, at present in the minority, I expressed the hope that a new interpretation would be given to those words. It was gratifying that Professors Coper and Winterton agreed with me.

The second after dinner address was given by Sir David Smith, who exposed some of the errors and misconceptions concerning the dismissal of Mr Whitlam in 1975, and who showed that no legitimate criticism could be made of the actions of Sir John Kerr or Sir Garfield Barwick in dealing with that crisis. He has made an important contribution to our knowledge of the events surrounding this constitutional crisis, which was eventually resolved democratically and decisively by the electorate.

The speeches at this morning's session discussed the nature of modern democracy and changes that have occurred – in North America perhaps for the better, and in Australia for the worse. Mr Ted Mack, who advocated direct democracy, which he had practised as Mayor of North Sydney, suggested reasons why the Australian public has become generally disillusioned with its politicians. Professor Ayres showed how a similar or even greater alienation of the people from those in power exists in the United States and Canada.

Mr Mack convincingly argued in favour of citizen initiated

referenda. There are no doubt arguments to the contrary, but the question certainly warrants full consideration. Professor Ayres gave an interesting account of affairs in North America, where the current mood seems to be to require politicians to give real weight to public opinion, a mood which in Canada has gone so far as to lead to the proposal to give voters the right to recall Members of Parliament.

Does this mean that there is, at last, an effective reaction in North America against the tyranny of politically correct dogma? If so, is it too much to hope that this reaction will spread to Australia? Finally, Sir Garfield Barwick gave an authoritative account of the nature of parliamentary democracy. He pointed out that the authority of Parliament, which is at the heart of our democratic system of government, is threatened on two flanks. On the one hand, the power of the Executive virtually turns the Parliament into a rubber stamp to approve decisions taken in secret by a party Caucus. On the other hand, the sovereignty of the Parliament has recently been impaired by decisions of the High Court, which have declared constitutional principles that the Parliament cannot overturn, although there are no express provisions in the Constitution to support them.

Sir Garfield also pointed out that a republic could not confer any benefits not already provided by our constitutional monarchy, whereas the substitution of a President for the Monarch is likely to produce division in the community. I respectfully agree.

I have not been able to refer to the very useful contributions made from the floor in the course of the debates. I am grateful to all who have spoken at this Conference and to you all for your attendance.