

Concluding Remarks

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It seems to be my role to say a few words about the course of this Conference, although I cannot attempt to do justice to all that has been said or to recapture the force and colour of some of the speeches.

I hope that you will all agree that we have had another very successful Conference. We have again been singularly fortunate in our after dinner speakers, and are most grateful to the Honourable Jan Wade for her thoughtful address and to Professor Ken Minogue for the brilliant wit with which he sweetened his message. All the papers delivered during the sessions have been of high quality, so that the next volume of *Upholding the Australian Constitution* will make a contribution to the constitutional debate as impressive as that made by its predecessors.

I doubt if the general public understands the extent to which federalism in Australia has been dismantled and to which the authority of the States, which were originally intended to have dominant power in the Federation, has been reduced. It is an aim of our Society to inform the public of constitutional issues, and it may be that our efforts have been successful in creating a dawning awareness of the consequences of the effect that has been given to the external affairs power. Clearly we must continue the debate on that topic, with the dual objectives of ensuring that the procedure for making treaties is subject to effective scrutiny, and if possible control, by the Parliament, and that the power of the Parliament to legislate under section 51 (xxix) of the Constitution is confined within proper limits.

Mr Des Moore has thrown a new light on another provision of the Constitution whose abuse has tipped the federal balance against the States, namely the power given by section 96 to make conditional grants. He has illustrated how special purpose payments made by the Commonwealth to the States have little substantive purpose and serve the main function of political grandstanding. Such grants have swollen the bureaucracies of the States as well as that of the Commonwealth. His paper provides further arguments in favour of competitive federalism.

Another constitutional provision which has compounded the financial difficulties of the States is section 90, which forbids the States to impose duties of excise. I hope that Dr Craven is wrong in his pessimistic suggestion that the High Court will not change its views as to the restrictive nature of that provision. I hope that the Court will be convinced by the judgments of Dawson, Toohey and Gaudron JJ. and will follow them. I hasten to add that I have no special knowledge that sustains me in my optimism.

One of the gravest issues of today does not directly involve federalism. It concerns the position of the Aboriginal people. There is, of course, a natural sympathy for the dispossessed and a proper wish to improve the deplorable conditions under which some of those people live. These understandable, and indeed admirable, sentiments seem to have been perverted by the combined efforts of humanitarian idealists, self-seeking carpet baggers and political opportunists. Hence the confused and unsatisfactory law with regard to native title which has been discussed by Dr Howard, and the ridiculous tendency to elevate superstition above western culture and scientific

method about which Professor Gough spoke. One cannot exaggerate the danger to Australian society if this tendency continues.

More basic questions were raised by Mr Harry Evans and Professor O'Brien. Both spoke of the decline of our representative institutions. Mr Evans gave us a very balanced view of the possible part which citizen initiated referenda with proper safeguards might play in stemming this decline, although he made clear that the value of such referenda must necessarily be limited and that the practical obstacles to their adoption are formidable. I need hardly remind you of Professor O'Brien's stirring and convincing address; we must share his concerns at the tendency to abuse patronage and power, and his wish that the power of the Executive should be confined and sovereignty of the people made effective.

At the end of the Conference we returned to federalism with a discussion of the Engineers Case. In spite of Mr Nethercote's invitation, there are no corrections to his address I would wish to suggest. Never has a judgment which was so badly written had so influential an effect on constitutional development as that written by Sir Isaac Isaacs in the Engineers' Case. It was no doubt right for the Court in that case to reject the doctrines of reserved powers and the immunity of instrumentalities as they had previously been formulated. Where the judges went wrong was in deciding that the provisions of the Constitution which conferred power on the Commonwealth should be construed literally, with little or no regard to the context provided by the fact that the Constitution was a federal one. However, that decision is the basis on which the law has developed.

We owe our thanks to all those who have read papers during this Conference, to Mr John Stone who arranged the programme so well, to Dr Nancy Stone for all the help she has given in organising the Conference, and to you all for your attendance.
