

## Concluding Remarks

### **Rt Hon Sir Harry Gibbs, GCMG, AC, KBE**

I hope you will agree that at this conference we have again heard papers which make a valuable contribution to the discussion of some of the most significant issues of the day. I shall not attempt to refer to the papers individually since I could not do justice to the authors in the time available to me.

I may, however, presume to make a few comments on two of the questions discussed. Australia has gone astray in dealing with its Aboriginal population.

We have to recognise that there is a great gulf of comprehension between the majority of the population, on the one hand, and the tribal Aboriginals, comparatively few as they are, on the other hand. However, the gulf seems to be equally deep between the tribal Aboriginals and those people, part Aboriginal but of mixed blood, who have in truth lost their Aboriginal culture, although they claim to be Aboriginal.

The claim of the latter group to what are misleadingly described as land rights, and the recognition of that claim by the courts, has led to problems which the courts themselves have failed to recognise. The Parliament compounded those problems.

Surely it was a mistake to extend the provisions of the *Native Title Act* 1993 to an undefined and disparate class which includes persons who have no cultural affinity with the tribal Aboriginals, and no direct relationship with the land claimed; and equally erroneous to give a right to negotiate -- that is, a right to demand ransom -- to persons without requiring them to produce even a scintilla of evidence of their entitlements to the land rights which they claim.

It is by no means unjust to try to correct these errors, but not easy to do so. Part of the difficulty of resolving these problems is caused by the operation of the *Racial Discrimination Act* 1975 in conjunction with the constitutional right to receive just terms if property is compulsorily acquired; and the difficulty will be increased if the race power is held to mean that the only laws that the Parliament can make under that power are laws which benefit a particular race. International instruments, and the actions of organs of the United Nations, create additional difficulties, and threaten the very sovereignty of Australia.

The *Native Title Act* operates unjustly, and as a detriment to economic development within Australia, but whether it can and will be satisfactorily amended is a matter of conjecture.

Although I do not intend to refer to the details of the discussions at this conference, I would make an exception in favour of one contributor, who spoke from the floor, and whose remarks would otherwise go unrecorded. He is the holder of a leasehold property which is subject to seven different claims to native title. He has raised the argument, which seems convincing, that if compensation is to be paid to Aboriginals the burden should not be borne alone by the holders of pastoral leaseholds, but by the whole community, since the dispossession of Aboriginal lands resulted from the taking of freeholds as well as leasehold land.

The further matter that I would mention is the dysfunction of the federal system, caused by the fact that the tax base of the States has been unduly narrowed and that the Commonwealth collects an unduly large proportion of the taxation revenues. It is notable that the Premier of Western Australia, the Hon. Richard Court, in his address to us, dealt with both these questions and the problems created by *Mabo*; and notable also that both Mr Court and the Hon. Peter Walsh, although from different sides of politics, recognise the need to give the States the power and the responsibility to raise the revenues that they are required to expend. It must be clear to

everyone, except the politicians and bureaucrats in Canberra, that the situation demands a remedy.

I could not usefully add any comment on the interesting addresses we have heard from Mr McGuinness, Professor Craven and Professor Flint, which are fresh in our minds.

I thank all those who have contributed the papers which we have heard with such benefit and enjoyment, and would also thank all those -- including particularly our man in Perth, Mr Bevan Lawrence -- who have done so much to make this conference a success. I thank you all for your attendance.