

Chapter 14

Chief Justice Gibbs: Defending the Rule of Law in a Federal System*

Introduction

The “bad” Roman Emperors of the first two centuries—Caligula, Nero, Domitian and Commodus—habitually had meted out to them, after their periods in office ended in violent death, the fate known as *damnatio memoriae*. Fortunately, Sir Harry Gibbs lived a long and productive life after his retirement from the High Court in 1987, but from 1987, at least in some fastidious legal circles, he has suffered a similar fate. He has been blamed for faults he lacked, and criticised for lacking qualities he had. It is true that he has left no disciples. He has founded no school. Modern counsel desperate for an argument have recourse to him, but he is not much esteemed by modern courts. Yet he was one of the greatest judges, and one of the greatest Australians, of the 20th century. Time does not permit any demonstration of that thesis in detail. The present audience is unlikely to dispute propositions of that kind about our former President, who made such prodigious efforts on the Society’s behalf for so long. I want only to identify a few of Sir Harry’s characteristics, and correct a few misunderstandings about him.

Manner in court

There was in him no element of schizophrenia or of split personality. There was no contrast of style and substance. He was a man of complete integrity in every sense of the word—in particular, all the qualities he exhibited operated in a mutually and harmoniously integrated way.

Most people will have had their first personal encounter with him in court. There he was cool, mild-mannered, unpretentious and tactful. He was quiet, unflustered, and, above all, unfailingly polite.

In this he was generally thought to stand in contrast to his energetic but combative predecessor, Sir Garfield Barwick. Sir Maurice Byers said of the first few times he appeared before Sir Harry as Chief Justice, “I was quite disconcerted. It took me some time to spot the difference. I was the only one talking. All the Judges appeared to be listening”.¹

* Inaugural Sir Harry Gibbs Memorial Address, Eighteenth Annual Conference of the Samuel Griffith Society, University House, Australian National University, 26 May 2006.

1 Toast to Sir Harry Gibbs, New South Wales Bar Association Dinner, 5 December 1986, *Bar News*, Autumn, 1987, 9.

This is a preview. Not all pages are shown.