

The Inaugural Sir David Smith Memorial Oration

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The Honourable Eric Abetz

It is not only right and proper, it is indeed an essential service in preserving the history of our nation, to salute the service and memory of one who served his country with exceptional diligence and great integrity during one of the more difficult chapters of our constitutional history.

In honouring Sir David Smith's life in an annual Sir David Smith Memorial Oration, The Samuel Griffith Society has done the Australian people a great service in providing an opportunity for genuine truth-telling (a term which these days may be a label for the exact opposite) about our masterfully crafted constitution and its smooth operation in exceptionally trying times whilst honouring one of its own - a founding member and former president no less.

The Oration will also provide an opportunity to showcase the characteristics of a gold-standard public servant to whom all entering that vital sphere of administration might aspire. That said, it is a singular honour to have been invited to deliver the Inaugural Sir David Smith Oration. My only hesitation in considering the invitation was how does one honour such an outstanding Australian in a single speech. The good news is that future contributors to this Oration will be able to add to the historical record and cover my omissions.

But for two bulls of Australian politics doing mortal political battle in 1975 we may never have known much about Sir David's contribution to our Nation's life. And chances are he would not have written a book, about which more will be said later.

The two bulls, to whom I refer, were men towering in physical stature, with egos to match and with a determination to keep or gain power not before witnessed in Australian politics. One a Prime Minister who sought to govern without supply and another who, some may say, was in an indecent haste to claim the government of the country. The Parliament was in deadlock. The Prime Minister controlling the numbers in the House of Representatives and the Opposition Leader in the Senate providing a parliamentary gridlock or stalemate.

To use an Australian Rules Football analogy - these two players had the ball of Australian democracy locked in between them in what commentators would call a 'hardball get.' To further the Aussie Rules analogy, a 'melee' had begun to form and the ball was not about to emerge for the game to continue.

In those circumstances, the umpire blows the whistle and bounces the ball to allow the game to continue.

This is what our constitutional umpire did on the 11th of November 1975. And with that, Sir David's visage appeared on every TV screen and in every newspaper. On that day Sir David became a household name as he read the Governor-General's proclamation dissolving both houses of the Parliament. Not dismissing the government, but more about that later. The events of Remembrance Day 1975 have generated much heat but not much light and have seen gallons of ink spilt without much coherence in many of the scribblings which ensued. In that void, Sir David has made a thoughtful, right-minded contribution to the public discourse not only from the insider's vantage point but with the poise and wisdom of stepping back and providing as objective an assessment for which one could wish.

But first, what of the person Sir David Iser Smith KCVO AO. A son of migrants who made their way in the world through sheer hard work. He was born in 1933 and served our nation as a public servant from 1953 to 1990 - some 37 years. Sir David embarked on a public service career while studying at university. His move through the ranks was rapid, being promoted on those now out of fashion, rare and much-disregarded metrics of capacity and performance, culminating in his appointment as the Official Secretary to the Governor-General. His is the career that gives public servants a good name.

For five years, he was a private secretary to Ministers in the Menzies Government, after which he held various posts, culminating in being appointed as Official Secretary to the Governor General - a post he held for 17 years, serving five different Governors-General.

On the way through, he was the recipient of many honours, including being appointed a Commander of the Royal Victorian Order (CVO) in 1977, an Officer of the Order of Australia (AO) in 1986 and in a private ceremony was knighted by Her Majesty as a Knight Commander of the Royal Victorian Order in 1990. On receiving notice of this high honour necessitating travel to London, David, as he still was then, told his children the Queen wanted to see him to make a Lady out of their mother. An insight into his humour. As to the knighthood, Sir David saw it not so much as a personal accolade but an opportunity to draw attention to the cause.

A doyen of Australian public life, Sir Paul Hasluck enthusiastically opined in 1992 that one of the wisest decisions of his public life was to appoint David Smith as the Official Secretary. An assessment with which the last Governor-General whom he served concurred. On the occasion of Sir David's retirement, the Hon. Bill Hayden referred to characteristics of professionalism, faithfulness, loyalty, propriety and zealousness with which he protected the independence and integrity of the office of Governor-General.

The sort of accolades we all would wish to have spoken on our retirements, but few receive, let alone as deservedly as Sir David.

Not done with his lifetime of contribution as an exemplary public servant, Sir David devoted much time in his retirement to correcting the false narratives that were proliferating about the events of Remembrance Day 1975 and our constitutional arrangements. His well-articulated and reasoned interventions at the Constitutional Convention in 1998 as an appointed delegate were nothing short of superb, outdoing many a QC and others allegedly learned in the law.

A masterpiece which should be compulsory reading for every student of Australia's history and anyone seeking to understand constitutional law is the seminal work of his entitled "Head of State - the Governor-General, the Monarchy, the Republic and the Dismissal". Upon reading his work, it is clear that many a professor, King's Counsel and indeed Chief Justice are exposed as not being as learned in the law as they may have thought or projected themselves.

Laden with gems, facts and unassailable propositions, this 358-page work remains as relevant today as when first published in 2005.

His debunking of myths and their deconstruction with rational, factual, coherent arguments devoid of hyperbole makes Sir David the best High Court Judge, if not Chief Justice, that Australia never had.

The meticulous research with which the reader is regaled in his book makes it the 'go to' authoritative treatise on our arrangements vis-à-vis the Head of State, the role of the monarch, and our independence as a nation from any interference from the United Kingdom. In defending our constitutional monarchy, Sir David masterfully, comprehensively, and persuasively not only clips the wings of the would-be republicans but plucks them of their very last feather.

Take, for example, the assertion that Australia is not an independent country and is still subject to dictates from London, as is still being falsely asserted by some republicans.

Sir David quite rightly cites a distinguished Tasmanian - Andrew Inglis Clark - who had some not insignificant input into the drafting of the Australian Constitution and who said as early as 1900 that the Governor-General's authority stemmed from the Constitution itself, not the monarch and, as such, the monarch could not direct the incumbent in the performance of his constitutional duties.

Indeed, Sir David reminds us that special legislation was needed in 1953 to empower Her Majesty to undertake some of the functions of the Governor-General during her visit. To clarify this for good, in 1984, the Letters Patent were further amended to confirm the Clark position espoused some 84 years earlier. The Australia Act in 1986 also purported to do the same, and in 1988 the Hawke Government appointed Constitutional Commission, on which Gough Whitlam sat, unanimously wrote:

“Although the Governor-General is the Queen's representative in Australia, the Governor-General is in no sense a delegate of the Queen.”

The Commission also wrote:

“...that at some time between 1926 and the end of World War II Australia had achieved full independence as a sovereign state of the world.”

And:

“The development of Australian nationhood did not require any change to the Australian Constitution.”

Yet we still hear republicans beat their deafening drums about the need for an Australian head of state and the need to gain complete independence from Britain. One could ask, rhetorically, of course, what is it about Gough Whitlam's own words that the republicans do not understand?

Yet, interestingly, those who decry the possibility of the monarch being involved in Australian politics were the very ones who sought to appeal to the monarch during the events of 1975 to so intervene and do exactly that.

In response to that request made by the then Speaker of the House of Representatives, Her Majesty's Private Secretary advised:

“...the Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution...it would not be proper for her to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General.”

As Sir David so neatly summarises the situation:

“That, surely, put an end to all doubts about where Australia’s sovereignty lies.”

It should have, but it did not. The republicans continue to make their loud noises, hoping their decibels drown out the facts and precedents that debunk their myth peddling. A full paragraph from Sir David’s treatise neatly sums up the role of our Australian Governor-General. He says:

“Under our constitutional monarchy, the Crown symbolises the Australian system of government. The powers, duties and functions of the head of state are carried out by an Australian who holds the appointed office of Governor-General. Unlike an elected president, a Governor-General comes to that high office without having to seek it, and without having to defeat others to attain it or retain it. As a result, an appointed Governor-General is able to represent national unity in a way that no elected president would be able to do, for an appointed Governor-General has no political constituency to represent and no supporters to reward, has no mandate to discharge, and provides no alternative power base to that of the elected prime minister.”

A clear, concise and considered summary.

But knowing the minds of the republicans who often rely on the Irish model of a parliamentary system with an elected president, Sir David helpfully footnotes the campaign comments made by Mary Robinson in 1990 when she said:

“As President directly elected by the people, ...I will have the most democratic job in the country. I’ll be able to look the Prime Minister in the eye and tell him to back off if necessary because I have been directly elected by the people as a whole and he hasn’t.”

Competing mandates lead to conflict and gridlock, as witnessed regularly across the Pacific and from time to time right here in Australia, as well as between our two Houses of Parliament. Does Australia really want to insert a third power player into the mix with reference to a democratic mandate? Sir David’s response to that question does not need to be guessed.

In discussing the role of the Governor-General, Sir David, in an exceptionally succinct manner, outlines the role as the constitutional umpire, stating:

“...the reserve powers exist, not to give a Governor-General delusions of grandeur, but to enable him to remit to the House of Representatives the conduct of a government acting unlawfully, or to remit to the people -the ultimate custodians of our democracy - an issue which the parliamentary process is unable to resolve.”

Powers which the republicans rail against but agree need to be kept for any prospective president. Go figure.

One of the rare departures from Sir David’s clinical and forensic analysis of the constitution and its workings is when he allows himself to venture into “vibe” territory but with a fraction more depth than our learned friend Mr Denuto of ‘The Castle’ fame.

In speaking of our late Queen, Sir David made this observation:

“For several generations of Australians, the Queen is more than just a word in our Constitution, important though that is. For many of us, the monarchy was an important symbol during the Second World War, and we associated then, as we associate it today, with the embodiment of a sense of duty and with the acceptance of responsibility, as well as with democratic parliamentary government under the Crown.”

There is no doubt this departure of Sir David’s approach and reference to the Second World War was in large part, if not exclusively, because of the horrors of that War and the profound evil it overcame, an evil which saw many members of Sir David’s extended family meet an end which the world can never allow to be repeated. Sir David’s father left Poland with his parents and thus escaped the horrors that later befell most of the extended family. With no hint of entitlement, Sir David’s father would often reflect on the privilege he had been given to be allowed to come to Australia and how the son of a penniless Jew could become the Official Secretary to the Governor-General.

Indeed, a common theme amongst refugees and migrants to this country is that Australia is a blessed country to have its unique constitutional monarchy, which has ensured our longevity as one of the world’s longest-running democracies.

But that blessing will not simply continue in perpetuity because Australians were given a brilliant constitution. It will only continue if there are enough of our fellow Australians who

understand it and are willing to defend it. This is why the excellent work of The Samuel Griffith Society is so vitally important in reminding all of us about the constitutional excellence we have inherited and providing some intellectual horsepower and research into the public domain to which Sir David has so powerfully contributed.

On reflecting further on the findings of the Constitutional Commission, which found Australians are abysmally ignorant of how they are governed, Sir David wrote:

“This lack of knowledge on the part of the electorate has enabled republicans to misrepresent our present Constitution and to deceive and mislead the Australian people about the changes they wish to make to it.”

One of the chief offenders was Prime Minister Keating, who falsely asserted that our Australian Constitution was created in the British Foreign Office. The fact it was inspired solely by Australians, who drafted it and voted to adopt it, is completely lost on and ignored by Mr Keating.

Sadly, Mr Keating was not alone in his state of ignorance. Among the Liberal Party, there lurked people with similar uninformed views. Peter Collins, a former Liberal leader in New South Wales, inexplicably asserted his rationale for being a republican was because the ultimate decision-making process for Australia rests with a foreign government. Such an assertion was completely ruled out two years before Peter Collins' birth.

As someone who had the portrait of Sir John Kerr hanging in his office for many years, Sir David's reflections on Remembrance Day 1975 were of particular interest. Not only is Sir John to be admired for what he did on that day, but his portrait's presence provided a quick and unfailing political litmus test as the smiles and snarls the portrait elicited saved the need to ask where certain people lined up on the political spectrum.

The few who genuinely asked as to why Sir John's portrait had been chosen were regaled with an expression of admiration for his commitment to protecting the Constitution in circumstances where he had to dismiss the man who had recommended him for the position. One could only imagine the mental trauma besides concerns of constitutional precedent which occupied that great mind. With the advice sought from others, it is obvious that the decision to dismiss the Whitlam government was not taken lightly.

On reflection, it would have been better for each enquirer to have been given a copy of chapter nine from Sir David's book, which he entitled, “11 November 1975: Phew, what a day!”

Apart from telling us about the weather that day, we are given a first-hand eyewitness account of the activities that transpired, including where certain Commonwealth cars were parked and why.

Amongst other things, Sir David's account completely debunks the conspiracy theories that continue to be breathlessly repeated despite their falsity. Sir David's factual account reminds us that mere repetition does not obviate the need for evidence in seeking to prove an assertion.

Another falsehood of the dismissal narrative is that Sir David read a proclamation of the 'dismissal of the government' from the steps of Parliament House. Not so. What he, in fact, read was the proclamation dissolving both Houses of Parliament, something Sir David had done previously in 1974 and did on other occasions after 1975.

Turning to the dismissal itself, we are given a thoroughly researched piece of history intertwined with extensive extracts of the established and accepted wisdom of the day, which was laced with many inconvenient truths for one lot of the protagonists.

Chapter ten opens the dismissal discussion with a quote from Dr. Evatt, who in 1939 opined, without any pushback, that:

“So far as Australia is concerned, a long course of practice tends to negative the proposition that the Governor-General...is a mere automaton in the hands of Ministers who have lost, or are about to lose, the support of Parliament.”

That is a very apt quote from a Labor luminary.

And on the other issue as to the Senate rejecting or deferring money bills, the accepted advice of the Senate Clerk was quoted, informing the reader that:

“Any contention that there is a convention that the Senate should not defer or reject money Bills is insupportable.”

Such was and has been the misreporting of the events of the dismissal that Sir David found himself saying:

“... no event in Australia's political history has received so much inaccurate and misleading coverage.”

There are many contenders for second place, but the observation remains true. The inaccuracies about the dismissal abound in their egregiousness and number.

The idea that the effective operation of the constitution allowing the people, through the ballot box, to resolve a parliamentary impasse is a ‘coup’ is one quick look into the hyperventilation and hyperbole in which far too many have engaged.

In fact, the manner in which the matter was resolved highlighted the enduring quality of our system of government, not any weakness. As Sir David tells us:

“The events...put our system of government to the most extreme test, but the system worked, and the process of public administration did not miss a beat.”

The delicious irony of those arguing Australia must free herself from the monarchy are the same voices which urged the Prime Minister of the day and the Speaker to contact Buckingham Palace seeking Her Majesty’s involvement in an issue that had been fully handled in Australia by Australians for Australians in circumstances where the Australian people were about to have their democratic say through the ballot box.

Suffice it to say Buckingham Palace reminded those seeking the Palace’s intervention that all these matters were for Australia’s Governor-General to resolve in accordance with the Australian Constitution.

As to the preposterous proposition that money Bills are not to be deferred or rejected in the Australian Senate, we are provided with a full list of quotes from those who justified such action when they tried and failed, courtesy of Sir David’s meticulous research.

The most powerful of the quotes come from a Labor Senate leader and later High Court Judge, Lionel Murphy, who in 1967 told the Senate:

“... There is no tradition, as has been suggested, that the Senate will not use its constitutional powers, whenever it considers it necessary or desirable to do so, in the public interest. There are no limitations on the Senate in the use of its constitutional powers except the limits self imposed by discretion and reason. There is no tradition in the Australian Labor Party that we will not oppose in the Senate any tax or money Bill, or what might be described as a financial measure. Our tradition is to fight, whenever and wherever we can, to carry out the principles and policies for which we stand ...”

Some years later, to make the point again, Senator Murphy tabled a list of 169 occasions on which Labor sought to defeat money Bills in the Senate.

If Lionel Murphy was not sufficiently authoritative for the reader, Sir David quotes none other than the dismissed Prime Minister Whitlam, in a former manifestation as Leader of the Opposition, when he said:

“Any government which is defeated by the Parliament on a major taxation Bill should resign...This Bill will be defeated in another place. The Government should then resign.”

Most tellingly, Sir David, through his meticulous research, explodes the conspiracy theory that consulting the Chief Justice of the High Court during the 1975 stalemate was somehow inappropriate.

Inconveniently, he reminds the conspiracy theorists that in 1951, when Menzies sought a double dissolution, the Labor Opposition was strongly of the view that the Governor-General was not obliged to accept the Prime Minister’s advice and that he should seek independent advice from ... you guessed it, the Chief Justice of the High Court.

So, Sir John Kerr was doing exactly that which Labor figures asserted should happen in 1951 when he consulted Sir Garfield Barwick, the then Chief Justice of the High Court. To assert that Sir John and Sir Garfield acted improperly, unconstitutionally and without precedent is a preposterous proposition - displaying wilful ignorance or deliberate deceit.

The mild, professional, proper and exceptionally fair-minded Sir David gives us a clear and clinical insight into his views about the dismissal when he asks ten devastating questions, which he invites Mr Whitlam to answer toward the end of his book. Set out in bullet point form, they actually are bullets, in the literary sense, which shoot down the Whitlam mythology – hitting the bullseye one after the other.

In case there be a reader suffering an obtuseness of mind, he follows the ten questions with the following exhortation:

“... I suggest that, instead of continuing to strut the national stage as the wronged legendary hero of Australian politics, it’s time (Mr Whitlam) said sorry to his party for being such a failure as leader, it’s time he said sorry to the Australian people for being such a failure as Prime minister, and it’s time that he told the truth about the events of 1975.”

Sir David's threefold use of 'it's time' did not go unnoticed, and one suspects might be a play on Mr. Whitlam's campaign slogan of 1972. One wonders.

Friends, the contribution of Sir David Smith has been recognised in many forms, even if not by partisans and rage maintainers, with awards and accolades. Deserved and valued though such awards are, they are ultimately of less value, in comparison, to keeping alive the memory of the outstanding work and contribution of Sir David's life in an annual Oration reminding future generations of the 'truth of the matter' surrounding the events of 1975 and the robustness and soundness of our uniquely Australian designed constitutional arrangements which have a constitutional monarchy designed and devoted to the protection of our democracy and the Australian people from the excesses of politicians.

This Oration salutes Sir David Smith, who, to use a Yiddish term for an outstanding individual, was a 'mensch'. Sir David was a great Australian whose work needs to be immortalised and passed from generation to generation. The annual Sir David Smith Memorial Oration will serve exactly that purpose, and I wish it well.