

# SIR WILLIAM DEANE: THE END OF AN ERA

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It is interesting that, after some thirteen years as an (some would say the most) influential member of the highest court in the land, surprisingly little is known about Sir William Deane. Apart from a smattering of details about his academic and professional accomplishments (Sydney University Medal, Rotary Scholarship to Trinity College Dublin, Diploma of International Law cumma laude from the Hague, QC after only nine years of practice, and Judge of the NSW Court of Appeal, Federal and High Courts - a not insubstantial litany of achievement), most of Sir William's personal opinions and private life have remained just that - private.

The maintenance of this degree of privacy has had a number of ironic consequences. When Paul Keating appointed him Governor General designate earlier this year he was not to know that his only previous political affiliations were as a candidate for the Labor-hated Democratic Labor Party in the 1950's and, more recently, as an advisor to the NSW Liberals. Likewise, so little was known of Deane's personal beliefs that when he was appointed to the Court in 1982 by the Liberal Attorney-General, Senator Peter Durak, both he and the majority of commentators thought that Justice Deane would be both a States' Righter and a conservative to boot. Pundits were wrong on both counts.

"Perhaps this should not be surprising, for, as Sir William explained in the only press conference he held as a member of

the High Court, "all that I have to say can be found in the pages of my judgements."

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But my oh my the things he has had to say! Most people can recall at least some of the areas in which Justice Deane's voice has had an impact, but it is only recently that he revealed the simple yet immutable principles underscoring his decisions over the past decade; firstly, that "the source of all government authority and legitimacy in a true democracy such as Australia is the people" and, secondly, a belief in the "inherent equality of all people". On a broader level it is also evident that these beliefs have been shaped by his devout Catholicism (indeed during the 1950's Sir William seriously considered entering the priesthood), which holds that the law is based on "fundamental ideas of justice",

and is not merely what the legislators say it is.

From this ideological mix has emerged a judge with a commitment to ensuring Big Brother remains firmly in his place, unable to arbitrarily encroach upon the liberty of the individual. As such, when discussing the plight of farmers affected by Commonwealth environment legislation in 1987 he proclaimed that "insignificant though those areas may be in the overall perspective from Canberra, their owners, few though they may be, are still citizens whose lives and property are beyond the reach of parliament: except as permitted by the Constitution - a protection it is the job of the courts to enforce."

He is also not adverse to rebuking the government directly. In 1988 during a hearing to suppress revelations about ASIO, two of his staff sitting in open court reported that a government officer was demanding onlookers names. Sir William was livid, and called a special hearing to demand, and get, a public apology from the Government - the first time the Court had used its unlimited jurisdiction to act against interference with the administration of justice.

Despite his reluctance to publicly express his opinions on various matters, Sir William has always steadfastly held fast to the things he believes in. As a close friend once remarked, even from his early days "once Bill had made up his mind on something, he was terribly hard to con-

# COMMENTS ON THE "PASSING" OF A HIGH COURT JUDGE



The announcement that Justice William Deane had been appointed Governor General sent shockwaves throughout the Australian legal community. *Polemic* felt that it was appropriate to mark the end of an era in legal jurisprudence with media and academic comments about the loss.

The *Financial Review* viewed the prospect of an Australian High Court without Justice Deane as a "disaster of cataclysmic proportions."

**Law students at Macquarie University attending a Remedies lecture the morning after the announcement were asked by Assoc Professor Bruce Kercher to observe a minute's silence.**

vince otherwise." Or, as a former Associate elaborated when discussing the duties required in that position, if you had a query with something he had written in a decision you would, as part of your job, raise the problems you saw in the judgement - and Sir William would then politely explain why you were wrong.

Justice Deane's strongly held beliefs have been mirrored by the forceful language he has used to deliver his opinions, a trait which has been most evident in his discussions of the express and implied guarantees contained within the Constitution, the rights of the individual to fair trial and the proper exercise of police powers. Furthermore, the images Sir William has used to convey his ideas have been almost as wide ranging as his interests, canvassing sources such as Lewis Carroll and *Alice in Wonderland* (twice), Shakespeare and Thomas Hobbes' *Leviathan*.

The combination of Justice Deane's intellectual force, his strength of belief and the power of his advocacy, allied with his habit of getting his judgements out first so other judges could ruminate on his opinions before producing their own, have had a substantial effect on the direction of the

court in the past decade. Even in dissent his contributions have been memorable; his decisions in *R v Kingswell* and the *Incorporations Case* leave one wondering how the majority conclusion could have been reached.

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It is fair to say that, although his loss is seen as a tragedy among progressive lawyers, the exit of Sir William Deane from the Australia legal stage is a blow that will be felt by many, whether we agree or disagree on the correctness of his opinions or the power of his decisions. Indeed, even the normally reserved *Financial Review* was moved to view the prospect of the

Court without Justice Deane as a "disaster of cataclysmic proportions."

However, despite the length of his achievements and the breadth of his influence, the most telling lessons to be learned from Sir William can be found not within the pages of his judgments but in the dignity he brought to his job. His humility is such that at various functions, legal and otherwise, he would often ask for a name-tag which, instead of proclaiming grandly "Sir William Deane - High Court of Australia" simply read "Bill Deane". This attitude was emphasised in a comment he made to a law magazine in 1990, where he stated "I don't think that being a judge of the High Court for a brief period of time in this corner of the world in this part of the universe is such a big deal. I don't go home at night and think what a great job I'm doing."

From a person who has reached the pinnacle, not only of his profession but of Australian society in general, commanding the respect and possessing the influence that he does, the humility and perspective contained within that statement makes it relevant for all of us. ■