AIJA Oration 2026

"Judicial Administration: The American Example and the Australian Experience"

Stephen Gageler*

It is a pleasure to join in celebrating the fiftieth anniversary of the Australasian Institute of Judicial Administration and an honour to deliver the 2026 AIJA Oration.

I suspect I am a little old to have heroes. I must admit, though, to having two Chief Justice "heroes". Both are American. The first is John Marshall, who served as Chief Justice of the United States from 1801 for over three decades during the early years of the Supreme Court and of the nation itself. Under his leadership, the Supreme Court handed down some of its seminal opinions articulating the foundational structure of American constitutional law. Marshall was also a great judicial statesman, establishing the basic practices of the Supreme Court as a collegial institution and bringing his colleagues together to enable the Court to speak with unity and authority during that formative period in the life of the nation.

The second of my "hero" Chief Justices is William Howard Taft. Compared to John Marshall, William Howard Taft is not a figure whose life and career have remained especially vivid in American, let alone Australian, historical memory. In fact, hardly anyone today has heard of him. If they have, it is usually only for the fact of him being the only person to have held both the office of the President of the United States (for a single term from 1909 to 1913) and the office of Chief Justice of the United States (from 1921 to 1930). The irony is that, during his Chief Justiceship, Taft was a popularly beloved figure. On his death, President Hoover proclaimed a period of national mourning and praised the "simplicity of virtue that won for him a place in the affection of his fellow countrymen rarely equalled by any man".[1] The *New York Times* declared that not only was Taft one of the most admired figures in American public life, but that "there is a universal agreement that he made himself the most loved".[2]

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* Chief Justice of Australia. This speech was delivered as the 2026 Australasian Institute of Judicial Administration Oration at the Banco Court of the Supreme Court of New South Wales on 23 October 2026. Thanks to Matthew Traeger for his great assistance in its research and preparation.

1 Herbert Hoover, 'Proclamation 1901 – Announcing the Death of William Howard Taft' (8 March 1930) *The American Presidency Project* <https://www.presidency.ucsb.edu/documents/proclamation-1901-announcing-the-death-william-howard-taft>.

2 Robert Post, 'Judicial Management and Judicial Disinterest: The Achievements and Perils of Chief Justice William Howard Taft' (1998) 1 *Journal of Supreme Court History* 50 at 68.

In addition to being a popular public figure, I do not think it is controversial to say that Taft was one of the most consequential Chief Justices of the United States. This has little to do with his judicial opinions or the jurisprudence of the Court he led. Rather, it is due to the major transformations he imagined and brought to life for the operation of the Supreme Court as an institution and the management of the federal judiciary as a whole. He has been described by his biographer, Yale law professor Robert Post, as "the father of federal judicial management".[3] Reformulating that description using the language associated with this evening's event, Taft can be justifiably regarded as the father of *judicial administration*.

One important motivation and effect of Taft's innovations as a judicial administrator was to reconceptualise federal judges' understanding of their own responsibilities as extending beyond the core task of hearing and deciding individual disputes. His reforms engendered a culture in which it came to be appreciated that judges also bear a degree of responsibility for the condition and functioning of the institutions and systems in which they perform their core task, and that judges' experience and perspectives equip them well to contribute meaningfully to the management and improvement of those institutions and systems.

This evolving understanding of the judicial role is the theme I have chosen to explore in my address. Taking Taft's reforms as the most prominent early example of that phenomenon, I thought it would be interesting to begin by telling the story of how those reforms came about and what they involved. I will then turn to Australia, where there has been a similar evolution in the judiciary coming to see its role as including broader systemic responsibilities. I identify that process as having begun in the 1970s and encompassing a number of developments which I will highlight, prominent among them being the establishment in 1976 of the AIJA. In sketching out the Australian story, I will also point out the ways in which the American example provided an influential point of reference as our judiciary established its own institutions and arrangements through which it could discharge its systemic responsibilities.

The American example

Taft's appointment as Chief Justice

Taft made it to the peak of American politics without being a particularly adept politician. He was elected President as Theodore Roosevelt's chosen successor. But he could not overcome the ideological fractures in his own Republican Party which split its vote at the next presidential

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[3] Robert Post, 'Judicial Management and Judicial Disinterest: The Achievements and Perils of Chief Justice William Howard Taft' (1998) 1 *Journal of Supreme Court History* 50 at 68.

election and led to the victory of Woodrow Wilson. President Taft, it has been said, possessed "neither charisma nor raw political talent".[4] His ultimate ambition had always, in fact, been the Supreme Court. Having spent the intervening years teaching at Yale Law School while remaining active in public affairs, his opportunity finally arrived in 1921 when he was offered the Chief Justiceship by President Warren Harding.[5]

His unique professional background meant he was extremely well suited to the office. Despite his underwhelming political record, Taft had actually been as President a highly competent and enthusiastic executive administrator. He had also spent many years immersed in federal legal policy and had developed a strong vision for how the justice system should operate.[6] On taking office, he channelled his administrative skills in pursuit of his vision with gusto.

The challenges facing Taft and the federal judicial system

Taft recognised that the sprawling federal courts system had become overwhelmed by serious problems of delay and cost. The courts' workload had ballooned alongside the growing national population and the expanding role of the federal government. A large increase in litigation associated with the First World War and the introduction of Prohibition led to backlogs in courts across the country.[7]

Although there were clearly not enough judges to meet this workload, Taft saw a deeper problem. In his view, what the federal judiciary really lacked was the administrative infrastructure to understand, oversee and manage its workload as a whole. Individual judges administered their own dockets but there was almost no coordination between judges or between courts. As Taft reflected: "heretofore each judge has paddled his own canoe and has done the best he could with his district. He has been subject to little supervision, if any".[8] Furthermore, there was little by way of accurate data about the courts' caseloads. There was no process by which resources could be moved to the parts of the courts system most in need. There was no forum which could consider the challenges facing the courts from a systemic perspective and develop system-wide solutions.

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4 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 2.

5 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 2-5.

6 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 6.

7 Felix Frankfurter and James M Landis, 'The Business of the Supreme Court of the United States – A Study in the Federal Judicial System - VI. The Conference of Senior Circuit Judges' (1927) 40 *Harvard Law Review* 431 at 444; Federal Judicial Centre, 'Landmark Legislation: Conference of Senior Circuit Judges' (website), <https://www.fjc.gov/history/legislation/landmark-legislation-conference-senior-circuit-judges>.

8 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 450.

Against this background, Taft's vision was for federal judges to think of themselves as members of a unified branch of government and to recognise a collective responsibility for the administration of justice. He sought to generate, in his words, "more solidarity of action among the Federal Judges, so that they shall feel that we are all working towards the same end".[9] He had earlier spoken of introducing "something of the executive method" into the management of the courts. He explained that the federal judiciary should approach the disposition of its caseload "in the same way that the head of a great industrial establishment approaches the question of the manufacture of the amount that he will need, to meet the demand for the goods which he makes".[10]

The Conference of Senior Circuit Judges

Only three days after his confirmation, Taft, "in his pyjamas before breakfast on a Sunday morning", wrote to the Attorney General with a proposal to that end.[11] His proposal was for a council of judges to oversee the federal judicial system. The proposal was ultimately enacted in 1922 by legislation establishing a body known as the "Conference of Senior Circuit Judges", chaired by the Chief Justice, consisting of the senior circuit judges of the nine federal circuits, and required to meet annually.[12]

Taft considered the Conference would be "an instrument for the consideration of many defects in the system and for the recommendation of remedies".[13] The legislation conferred on the Conference three principal functions. It was required to "make a comprehensive survey of the condition of business in the courts". It was to develop plans to assign and transfer judges to circuits or districts where they were most needed. It was to make suggestions to federal courts to promote "uniformity and the expedition of business". To assist the Conference in these tasks, the representatives of each circuit were to provide reports on matters including "the number and character of cases on the docket, the business in arrears, and cases disposed of".[14]

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9 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 457.

10 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 451.

11 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 449.

12 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 449-452.

13 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 452.

14 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 451. See also the legislation extracted at Federal Judicial Centre, *Landmark Legislation: Conference of Senior Circuit Judges* <https://www.fjc.gov/history/legislation/landmark-legislation-conference-senior-circuit-judges>.

There was some resistance to the proposal on the basis that it created a new layer of oversight over the individual judge. Yet, although Taft appreciated that "in the judicial work a judge does on the bench, [a judge] must be independent", he was firm in his view that "in the disposition of his time and the cases [a judge] is to hear, he should be subject to a judicial council that makes him a cog in the machine and makes him work with all the other judges to dispose of the business which courts are organized to do".[15]

The Conference met for the first time in December 1922 in the conference room of the Supreme Court, then housed in the Capitol Building. In its first few years, it recommended the creation of additional judgeships and the transfer of judges. It also suggested new legislation and other steps to expedite proceedings and remove inactive cases from the docket, streamline the jury selection process, simplify procedure, unify causes of action, and fund judicial libraries.[16]

The Conference changed the culture within the federal judiciary. With district judges reporting about the state of their caseload to senior circuit judges, who would themselves meet to discuss the national picture, it made federal judges at all levels active participants in the work of systemic thinking and reform. It transformed the role of the Chief Justice, who, "using the [Conference] as a kind of cabinet, became responsible for the management of the judicial branch in the same way that... the president was deemed responsible for the management of the entire executive branch".[17] It also provided a formal vehicle by which the federal judiciary could articulate its needs to the Attorney-General and to Congress.[18]

The Conference continued to evolve beyond Taft's time and was renamed as the "Judicial Conference of the United States" in 1948. It became firmly embedded as the national policy-making body for the federal courts. Over time, new institutions were established to support its work. In 1939, Congress established the Administrative Office of the United States Courts as a separate agency within the judicial branch reporting to the Judicial Conference. The Administrative Office assumed administrative responsibilities previously within the remit of the Department of Justice and represented the first independent statutory entity in the Anglo-American world given substantial responsibility for the administration of courts.[19] In addition, the Federal Judicial Center

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15 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 452.

16 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 453.

17 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 452.

18 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 453.

19 Donald Speagle, 'Independent Courts Governance in Victoria: Origins and Ideas from the United States' (2020) 29 *Journal of Judicial Administration* 157 at 160-161.

was established in 1967 for the purposes of conducting empirical research on the operation of the federal courts, to be overseen by a board of judges. Its research has informed the policy work of the Judicial Conference, including in relation to reforms to case management, the rules of procedure and evidence, and the allocation of resources between courts.[20] These institutions, which endure to this day, are the manifestations of a culture in which federal judges have come to exercise stewardship over the operation of the judicial system and are given dedicated resources to support them in discharging that broader responsibility.

Taft's legacy

To round out this sketch of Taft as a judicial administrator and reformer, I briefly mention two of his other projects. Taft was instrumental in legislative changes enacted in 1925 which gave the Supreme Court greater control over its docket by eliminating much of the Court's mandatory jurisdiction and making the discretionary writ of certiorari the principal means by which cases were heard by the Court.[21] This changed the Court's role from being the final court of appeal for most federal cases into "the institutional manager of the system of federal law".[22] Taft also led the campaign for the construction of a new building for the Supreme Court which would be suitable for the Court's growing administrative needs and its status as a co-equal branch of government. He secured congressional agreement and construction began a few years after his death.[23]

In describing each of these achievements, I have referred to the part Taft played in influencing decisions of the executive and legislative branches of government. Taft personally lobbied senators and House members, actively courted the support of bar associations for his proposals, and appeared before congressional committees.[24] He is reported to have drafted a portion of President Coolidge's State of the Union speech advocating for the legislation modifying the Supreme Court's jurisdiction,[25] a law commonly referred to as the "Judges' Bill" because it was authored by the Justices of the Supreme Court. Acknowledging that his methods went beyond

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20 Federal Judicial Center, *Federal Judicial Center Celebrates 50 Years: General History* <https://www.fjc.gov/content/327981/fjc-50th-general-history>.

21 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 484-485.

22 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 485.

23 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 550-565.

24 Robert C. Post, *The Taft Court: Making Law for a Divided Nation: 1921-1930* (Cambridge University Press, 2023) at 502-505.

25 Allen C. Sumrall, 'Separation of Powers and the Judiciary Act of 1925' (2025) 100 *Notre Dame Law Review* 2155 at 2165.

what we would now consider to be appropriate activities for a judicial officer, his achievements were transformational.

The Australian experience

Australia has not had an equivalent Taft-like figure or experienced a single, concentrated episode of reform directly equivalent to the establishment of the Judicial Conference of the United States. We have experienced a gradual evolution in our own understanding of the judicial role. We have established our own institutions and arrangements which manifest that understanding. Although we have not transplanted the United States model, key elements of what has emerged here were directly informed by the American example or have identifiable American parallels.

The Australian evolution can be seen in four main developments. First was the establishment in the early 1970s of regular meetings of judges from across the country. Second was the establishment of the AIJA as a means of involving judges in the study of challenges facing the justice system and the development of solutions. Third was the movement from the 1980s towards deeper judicial involvement in the governance and operations of courts themselves. Fourth was the emergence in the 1990s of a means by which the judiciary could speak and advocate on behalf of its interests with a collective and broadly representative voice. Let me take each in turn.

Judicial meetings

By the early 1970s, there was a growing recognition that the justice system was not keeping pace with the rapid changes being experienced across Australian society. Speaking in 1974, Russell Fox, then a judge of the ACT Supreme Court and later the first Chief Justice of that Court and one of the first judges of the Federal Court of Australia, reflected that "[n]o one would suggest that the system by which justice is administered is adequate or satisfactory. Plainly the position is otherwise".[26] In his view, the justice system warranted close study because "[t]he speed of change in economic, social and industrial conditions, in technology, and indeed in the whole field of knowledge is so great".[27] Furthermore, changes within the legal system, including the establishment

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26 The Hon Justice R W Fox, 'An Institute of Judicial Administration' in *Judicial Essays: Being a selection from the papers read to the conferences of the Australian Supreme Court Judges held in 1972, 1973 and 1974* (The Law Foundation of New South Wales and the Victorian Law Foundation, 1975) at 75.

27 The Hon Justice R W Fox, 'An Institute of Judicial Administration' in *Judicial Essays: Being a selection from the papers read to the conferences of the Australian Supreme Court Judges held in 1972, 1973 and 1974* (The Law Foundation of New South Wales and the Victorian Law Foundation, 1975) at 75.

of new federal courts, led to perceived increases in the volume and complexity of work before the courts. [28]

Until that time, there had been very few opportunities for judges to convene to discuss the challenges facing them. Justice Fox, inspired by a conference he attended in Honolulu for judges from Hawaii and the West Coast of the United States, thought that a similar kind of event for Australian judges would be valuable. He took the lead in organising the very first meeting of the judges of the State and Territory Supreme Courts which took place over three days in January 1972.[29] It was considered a success, and the meetings began to be held annually. There was scepticism from some quarters about this new endeavour. Sir Guy Green, who attended the first meetings as Chief Justice of Tasmania, later recalled:[30]

> Initially the conference was regarded very warily by the judges of at least one Supreme Court who were concerned that it might turn out to be a sort of judges' trade union or might assume a role which would interfere with their independence... But those initial concerns about the conference soon evaporated.

In their first few years, the conferences covered topics relating to challenges with civil and criminal trials, fact finding, contempt of court, criminology and the use of computers in the court system.[31] An annual pattern was established, and in time invitations were extended to the judges of the Federal Court and of the superior courts of New Zealand. Together with the many other judicial gatherings established since then, what has come to be known as the annual Supreme and Federal Court Judges Conference has done a great deal to foster a sense of institutional purpose and wholeness within the Australian judiciary.

An institute of judicial administration

The next development to be highlighted emerged from the first. At the third Conference of the State and Territory Supreme Courts in 1974, Russell Fox, having described the challenges facing the Australian justice system which I quoted earlier, then observed that there were no formal or ongoing mechanisms through which the issues facing the judiciary could be studied. He noted that although judges and the profession "are aware of most of the problems and have some ideas

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28 Dr James Waghorne, 'Improving Justice: A History of the Australasian Institute of Judicial Administration' (2014) at 6.

29 The Hon Justice JA Dowsett, 'The Conference – 40 Years On' (Speech, 2012) at 3.

30 The Hon Justice JA Dowsett, 'The Conference – 40 Years On' (Speech, 2012) at 8.

31 Dr James Waghorne, 'Improving Justice: A History of the Australasian Institute of Judicial Administration' (2014) at 7. Papers from the early conferences are published in *Judicial Essays: Being a selection from the papers read to the conferences of the Australian Supreme Court Judges held in 1972, 1973 and 1974* (The Law Foundation of New South Wales and the Victorian Law Foundation, 1975).

as to improvements", they lacked the "time... [or] research facilities" to explore these issues in depth.[32] He said that "at present a judge who has a problem or question which concerns judicial administration" – a term which he took to "encompass all matters which concern the system by which justice is administered" – "has no body or organization regularly operating in that field to which he can turn for information or assistance".[33] Surveying international comparators, Fox highlighted the existence of organisations in the United States that had been established to provide that kind of assistance, including the Federal Judicial Centre and the Administrative Office of the United States Courts. Fox considered that Australia "badly needed" something similar: a permanent, independent and national institution to make recommendations for improvements in judicial administration.

The idea gathered steam and Fox, alongside a small group of other senior judges, soon made it a reality. In 1976, a set of rules was drafted, a council was formed, and the organisation to be known as the "Australian Institute of Judicial Administration" was incorporated. Its inaugural chairperson was Sir Harry Gibbs, then Chief Justice of Australia, and members of its inaugural council included Fox himself, Zelman Cowen who was then the Vice-Chancellor of the University of Queensland.[34]

The Australian Law Journal described the establishment of the AIJA as representing the "introduction of modern principles of management and organisation into the administration of justice in Australia". It was observed that, until that time, changes to the way courts managed their business had "been based on intuitive views or 'hunches'" and there had been "practically no systematic monitoring of the changes effected in order to ascertain whether they have in fact contributed to improvements in judicial administration".[35]

An important feature of the AIJA's institutional design was the involvement of judges in its leadership and its work. This would ensure its priorities and efforts would be informed by judicial experience. At the same time, the AIJA would provide a link to the broader legal

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32 The Hon Justice R W Fox, 'An Institute of Judicial Administration' in *Judicial Essays: Being a selection from the papers read to the conferences of the Australian Supreme Court Judges held in 1972, 1973 and 1974* (The Law Foundation of New South Wales and the Victorian Law Foundation, 1975) at 80.

33 The Hon Justice R W Fox, 'An Institute of Judicial Administration' in *Judicial Essays: Being a selection from the papers read to the conferences of the Australian Supreme Court Judges held in 1972, 1973 and 1974* (The Law Foundation of New South Wales and the Victorian Law Foundation, 1975) at 81.

34 Dr James Waghorne, 'Improving Justice: A History of the Australasian Institute of Judicial Administration' (2014) at 9-10.

35 'Formation of the Australian Institute of Judicial Administration' (1982) 56 *Australian Law Journal* 387 at 387.

community by harnessing the research expertise of the academy and drawing on the perspectives of the profession. It would be a true collaboration.

The virtues of this approach were evident in the AIJA's first research project in 1982, a major investigation into the causes of delay and inefficiency in civil litigation. It was led by Dr Ross Cranston, then at the Australian National University, now Sir Ross Cranston, a professor of law at the London School of Economics, a retired judge of the High Court of England and Wales and the author of a book recently published by Oxford University Press simply titled "Judging". Focussing on the Supreme Courts of NSW, Victoria and the ACT as representative examples, Dr Cranston's review on behalf of the AIJA involved the examination of court files and interviews with over eighty judges and practitioners. It resulted in a detailed report on what actually took place in Australian courts and provided an empirical foundation for subsequent innovations in case management and procedure in courts across the country.[36] It set the bar for the kind of novel, rigorous and high-quality research the AIJA would go on to commission in the years since.

The AIJA was both a product and propellant of an expanding conception of the judicial role. From its beginning 50 years ago and to this day, the AIJA has helped judges to see themselves as part of a broader system – a system capable of being studied – and has equipped the judiciary with research and insights that can inform its work and the work of its staff to address the challenges confronting the system.

Judicial involvement in court governance and operations

The third development to highlight is the deepening of judicial involvement in the governance of courts as institutions. Decisions regarding the administrative affairs of courts, including in relation to funding, staffing, facilities and the allocation of resources towards institutional priorities, had traditionally fallen to the executive. A growing acceptance of the responsibility of judges for the performance of courts naturally raised questions about the appropriate level of authority that judges, especially heads of jurisdiction, should have over the operations and administration of those courts.

The AIJA convened an important seminar on this question in 1985. Its title was "Constitutional and Administrative Responsibilities for the Administration of Justice: The Partnership of the Judiciary and Executive". It was attended by the Chief Justice of Australia, the Chief Justices of the States and Territories, Commonwealth and State Attorneys-General,

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36 Dr James Waghorne, 'Improving Justice: A History of the Australasian Institute of Judicial Administration' (2014), Chapter 2; Ross Cranston, Peter Haynes, Julia Pullen and Ian Scott, *Delays & Efficiency in Civil Litigation* (Australian Institute of Judicial Administration, 1985).

departmental secretaries and court administrators. Sir Guy Green later reflected that "no such group had ever met before in Australia" and that he "thought at the time that this is really what the AIJA is about – facilitating discussions between people who do not normally see much of each other and enabling them to learn from each other and collectively to add to the general understanding of an important issue".[37]

Opening the seminar, James Kennan, the Victorian Attorney-General, described the state of affairs in this way:[38]

> Until recently, little thought had been given either by the judiciary, the executive or the profession to the problems of court administration. Now and again solutions had been posed to the problems in particular lists... but the fundamental issue of who is responsible for the administration of courts and what the relationship should be between the judiciary and the executive in this sense had not really been thought about or discussed. ...The executive was reluctant to interfere in the workings of the judiciary; the executive under-resourced the judiciary; the judiciary certainly felt neglected by the executive and did not initiate ideas or suggestions about judicial administration.

The seminar was followed by another of the AIJA's early, influential research projects, which examined three different models of court governance across Australia and represented the first systemic investigation of this issue in Australia.[39] One of the project's lead researchers was an American professor, Thomas Church, who had been an administrator for the US Ninth Circuit Court of Appeals, had authored reports on judicial administration for that country's National Centre for State Courts, and during his time visiting Australia delivered the second AIJA Oration in 1990.[40]

Much of the debate during this period drew on matters of core principle. One principle frequently invoked was judicial independence. There was a greater acceptance that judicial independence requires not only that the "judiciary is able to carry out its work free from improper influence or interference", but that "the judiciary is also provided with the powers and facilities

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37 The Hon Sir Guy Green, 'Comment on Court Governance Papers' (1994) 4 *Journal of Judicial Administration* 18 at 18.

38 The Hon J H Kennan, 'Opening Address' in *Seminar on Constitutional and Administrative Responsibilities for the Administration of Justice: The Partnership of the Judiciary and Executive* (Victoria Law Foundation, 1985) at 9.

39 Thomas W Church and Peter A Sallmann, *Governing Australia's Courts* (Australian Institute of Judicial Administration, 1991).

40 Thomas W Church and Peter A Sallmann, *Governing Australia's Courts* (Australian Institute of Judicial Administration, 1991) at vii; Professor Thomas W Church, 'The Second Annual Oration in Judicial Administration: A Consumer's Perspective on the Courts' (Australian Institute of Judicial Administration, 1990).

which are necessary to enable it to do its work".[41] In Guy Green's view, it followed that "judges thus have a duty to ensure that judicial administrators are, and are seen to be, under the control of the court, and that in carrying out their functions they are actuated by the same principles and values as those of the courts which they are serving".[42] Further, if judges were expected to improve court performance, they should be expected to have some influence over the systems and staff necessary to carry out judicial priorities. At the same time, courts relied on public resources for which the executive and legislative branches of government remain responsible, and judges would understandably have to rely in some way on the expertise of professional administrators.

Discussions at the 1985 seminar involved international speakers and referred to foreign examples as revealing different ways to balance these underlying principles. On one side of the spectrum was the United States, with the Judicial Conference, and an administrative apparatus directly responsible to the Judicial Conference, giving a high degree of judicial control over the federal courts. Justice Richard McGarvie of the Supreme Court of Victoria reported on a discussion he had with Sandra Day O'Connor, then a Justice of the Supreme Court of the United States, about her views on the American approach. Canada was somewhere in the middle.[43] The English and Welsh models stood at the other end of the spectrum, with the higher courts largely administered through the Lord Chancellor and his Department.[44]

The discussions facilitated by the AIJA and the research it produced on the topic influenced reforms in a number of jurisdictions which resulted in greater judicial involvement in court governance. The Federal Court of Australia and the Family Court of Australia were given a form of self-administration in 1989.[45] South Australia adopted a model involving judicial control of courts administration and a single body administering the entirety of the state's court system. Chief Justice Len King, who led the reform, explained that he was influenced in that regard by a visit to the United States in 1981.[46] In Victoria there began a long debate which culminated in the

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41 Guy Green, 'The Rationale and Some Aspects of Judicial Independence' (1994) 59 *Australian Law Journal* 135 at 135.

42 Guy Green, 'The Rationale and Some Aspects of Judicial Independence' (1994) 59 *Australian Law Journal* 135 at 147.

43 The Honourable Mr Justice Willard Z. Estey, 'The North American Experience: A Theorem of Judicial Administration' in *Seminar on Constitutional and Administrative Responsibilities for the Administration of Justice: The Partnership of the Judiciary and Executive* (Victoria Law Foundation, 1985) at 39-40.

44 The Right Honourable Sir Donaldson and Professor I. R. Scott, 'Court Administration in England and Wales' in *Seminar on Constitutional and Administrative Responsibilities for the Administration of Justice: The Partnership of the Judiciary and Executive* (Victoria Law Foundation, 1985) at 43-71.

45 *Courts and Tribunals Administration Amendment Act 1989* (Cth). See also Donald Speagle, 'Independent Courts Governance in Victoria: Origins and Ideas from the United States' (2020) 29 *Journal of Judicial Administration* 157 at 168.

46 Donald Speagle, 'Independent Courts Governance in Victoria: Origins and Ideas from the United States' (2020) 29 *Journal of Judicial Administration* 157 at 172.

adoption in 2014 of a model which saw the transfer of administrative responsibilities for the state's courts from the Department of Justice to an independent statutory body governed by a Courts Council whose members include heads of jurisdiction.[47] Of course, no one model has emerged nationally dominant and a variety of arrangements, giving judicial leaders and judges differing levels of authority and through different mechanisms, are now found across the country. Nevertheless, the trend has been for judicial leaders and judges to take on more formal responsibilities in this domain.

Speaking and acting collectively

I come now to the final of the developments: the emergence of representative bodies for the judiciary. In an influential speech delivered at the Supreme Court and Federal Court Judges' Conference in 1992 and published in the AIJA's *Journal of Judicial Administration*, Justice McGarvie identified the absence of a representative body for the whole of the Australian judiciary and proposed that one be created. He argued that such a body was needed to take leadership on the policy concerns of the judiciary. He identified as a chief objective of such a body the protection and promotion of judicial independence. He explained: "The fragility of judicial independence is such that there is a pressing need to start thinking of ourselves as members of the Australian judicial arm of government. We need to provide a means for some corporate thought, expression and action".[48]

In both Justice McGarvie's speech and a subsequent paper considering the proposal in further detail by Justice Robert Nicholson of the Supreme Court of Western Australia, who spent a sabbatical at the Federal Judicial Center in 1992, attention was drawn to the example of the Judicial Conference of the United States and the equivalent Canadian institution. It was observed that central functions of those bodies included formulating and presenting a broadly representative view on matters affecting the administration of justice, and educating the public on the role of the judiciary and the issues affecting it. Bodies such as these had, Justice Nicholson considered, "motivated the judiciary elsewhere to become more articulate on behalf of the judicial branch of government".[49]

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47 *Court Services Victoria Act 2014* (Vic). See also Tim Bunjevac, 'The Transformation of Court Governance in Victoria: Part I: Key Concepts and Models' (2018) 28 *Journal of Judicial Administration* 69 at 71.

48 The Hon Justice Richard McGarvie, 'The Ways Available to the Judicial Arm of Government to Preserve Judicial Independence' (1992) 1 *Journal of Judicial Administration* 236 at 265.

49 The Hon Justice R D Nicholson, 'Judicial Independence and Judicial Organisation: A Judicial Conference for Australia?' (1993) 2 *Journal of Judicial Administration* 143 at 158.

This proposal ultimately led to the establishment in 1993 of the Judicial Conference of Australia, which was renamed as the Australian Judicial Officers Association in 2021. The AJOA has explained the role of courts to government and the community, responded to misleading criticisms made of the judiciary, contributed to judicial education and connected Australian judges with the international judicial community. In doing so, it has reflected an acceptance that it is entirely proper for representatives of the judiciary to speak out on appropriate occasions and engage with the community where this would promote understanding of the values and principles on which the functioning and legitimacy of the justice system depend, including judicial independence and the rule of law.

A complementary development in 1993 was the first meeting of the Council of Chief Justices, a body chaired by the Chief Justice of Australia and consisting of the Chief Justices of the State and Territory Supreme Courts, the federal courts and now also the Chief Justice of New Zealand. The CCJ has no formal powers but has facilitated a degree of collaboration between jurisdictions on matters of common importance, partnered with other organisations on projects of national significance, and has relied on its representative legitimacy in communicating to government on issues affecting the Australian legal system. It has become one of the main vehicles through which heads of jurisdiction have fulfilled their systemic responsibilities.

Conclusion

In 1992, Justice McGarvie offered this plea, in words that could also be used to summarise William Howard Taft's project in the United States earlier that century: [50]

> "[Judges] must free themselves... from that deeply embedded fiction of judicial culture that the only work worthy of a judge is sitting in court with a wig on during the court day and writing judgments afterwards. Time properly spent in thinking, planning and implementation for the benefit of the court system is just as worthy."

We have today a judicial culture that, by and large, embraces this notion enthusiastically. The institutions and initiatives I have highlighted, as well as many others I have not had time to catalogue, are evidence of this culture. The AIJA being among those institutions, it is appropriate this evening to recognise with appreciation its distinctive contribution and the part it has played in this important, larger story.

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50 The Hon Justice Richard McGarvie, 'The Ways Available to the Judicial Arm of Government to Preserve Judicial Independence' (1992) 1 *Journal of Judicial Administration* 236 at 276.