Introductory Remarks

John Stone

Ladies and Gentlemen, welcome to this, the fourteenth Conference of The Samuel Griffith Society.

As most of you know, the Society was founded just over ten years ago, in January, 1992, and its Inaugural Conference was held almost ten years ago, in July, 1992. It is fair to say, I think, that its foundation was not well received by our media. One senior journalist, writing at that time in Melbourne's "quality" broadsheet, *The Age*, described us as "another right wing think tank", and sundry other such bouquets were handed to us by our journalistic mentors. The writings of that journalist, which now grace the columns of *The Australian Financial Review*, have not varied in quality over the decade, any more than have those of his fellow scribblers.

More serious than those journalistic animadversions, however, were certain canards put about at the time by some who not only should have known better (one does not, after all, expect that from most of our journalists), but whose own reputations have to do with the integrity of their discourse. A Justice of the High Court, no less, was alleged to have sought most assiduously to blacken our reputation in judicial circles – particularly after one of our members, Mr S E K Hulme, QC produced, in 1993, his devastating dissection of both the reasoning powers and the judicial propriety of (six Justices of) *The High Court in Mabo* (as his lapidary paper to this Society was entitled).

Another Justice of that Court was even reported to have alleged that the Society had been established by Western Mining Corporation as a means of denigrating the High Court's whole "native title" judicial legislative enterprise. Apart from the fact that the Chief Executive Officer of that company, Mr Hugh Morgan, AO was initially a member of our Board of Management, there was not otherwise a scintilla of truth in that allegation. It could only have been made by one who paid as little regard to the need for evidence in that matter as, indeed, the Justice in question had done in his *Mabo* judgment.

It is against that background that I mark the signal honour paid to the Society at our opening dinner last night by the present Chief Justice of the High Court, the Honourable Justice Murray Gleeson, AC. His Honour's address, for those of you here this morning who may not have been privileged to hear it, provided a scholarly description of – to use its title – *The Birth, Life and Death of Section 74* – the section of our Constitution, now defunct, which dealt with appeals from Australian courts, both the State Supreme Courts and the High Court, to the Judicial Committee of the Privy Council (generally known simply as the Privy Council).

It is now sixteen years since the passage of the *Australia Acts* 1986 (by the federal and all State Parliaments, and by the British Parliament also) finally abolished what were by that time merely the vestigial remnants of the power for Australian citizens to have their cases tried in a foreign court. In passing, I note that, next week, the Coalition Government parties in Canberra are said to be deciding whether Australia should now surrender a great deal more judicial sovereignty than was involved in 1986, to an international court (the so-called International Criminal Court) which is likely to be a great deal less judicially respectable than the Privy Council ever was. Listening to the Chief Justice last night, I could not but reflect upon the folly (not to mention the constitutional questionability in terms of Chapter III of our Constitution) of any such proposal.

Having referred earlier to the Inaugural Conference of the Society nearly ten years ago, let me now quote something which I said in my introductory remarks on that occasion:

"Alexis de Tocqueville, in his famous work *Democracy in America*, has a chapter on Public Associations in which he had this to say:

> 'Americans of all ages, all conditions, and all dispositions, constantly form associations, ….. If it be proposed to advance some truth, or to foster some feeling by the encouragement of a great example, *they form a society*'." (Emphasis added).

I went on to say that "The Samuel Griffith Society is now launched 'to advance some truth', and 'to foster some feeling' in defence of our Constitution". Today we can say that, for ten years, in its own small way, it has done so.

Our program this weekend, copies of which you all have, touches as usual upon a number of separate topics. As things have turned out, two of these topics in particular seem most aptly timed. I refer, firstly, to our session this afternoon, when we shall hear three papers under the general rubric of *Immigration and Judicial Activism* – a subject which could hardly be more topical. Secondly, our session tomorrow morning on *National Sovereignty versus International Law*, which I know will address, among other things, the proposed International Criminal Court, will also be extremely timely for the reasons already stated.

Important as these matters (and indeed, all the other topics listed in our Agenda) are, however, there is probably no topic more central to the interests of this Society than that with which we shall now begin – namely, the malign influence which, more than 80 years ago, the *Engineers' Case* cast over the whole subsequent development of our constitutional history, transforming what was originally our fundamentally federal Constitution into a basically centralist one. Having had the benefit of a prior reading of our first paper, by Professor Geoffrey Walker, on that general issue, I can assure you that you are to begin today with a veritable *tour de force* upon it. Presiding over it will be our Session Chairman, Mr Ray Evans (himself, appropriately, an engineer), and I now ask him to take the Chair and introduce our first speaker.