

Chapter Thirteen

Concluding Remarks

Sir David Smith

As another successful conference draws to a close, I have to say that it has been a great pleasure to listen to thoughtful and thought-provoking papers delivered by knowledgeable people, and to participate in intelligent discussion about the material placed before us. What a contrast with what has been said and written on the other side of the continent this past week about the election and its aftermath. I thank all of our speakers for their contributions, and our colleagues who have organised and conducted this weekend.

Since election day our media have been full of constitutional commentary and advice from many journalists who have no idea about the issues involved. Let me give just three examples. One journalist advised Prime Minister Gillard to simply present her ministry to the Governor-General and ask that they be sworn in immediately, without waiting for the Australian Electoral Commission to finish counting the votes or to return the writs to the Governor-General. Other journalists suggested that the Governor-General would have a conflict of interest in exercising her reserve powers to choose the next prime minister, completely overlooking the fact that constitutional conventions, if observed, would result in Her Excellency acting on advice instead of making her own decision. Another journalist told his readers that the Governor-General should appoint a Deputy to make the decision for her, adding that the power to appoint deputies was added to the Letters Patent relating to the Office of Governor-General seven years ago. The fact is that the Letters Patent issued in 2003 contain no reference whatsoever to the power of the Governor-General to appoint deputies – that power has resided in section 126 of the Australian Constitution since 1 January 1901, and it has been used regularly ever since, for a variety of administrative reasons.

The Samuel Griffith Society was established to uphold the Australian Constitution and to participate in public education and debate on the document and any proposals to alter it. We have done this by producing a most amazing set of published conference proceedings, in hard copy and on our web site, to which the volume of this conference will make a significant addition, under our new editor John Nethercote. What a pity that public education and debate does not include journalists who seem able to write and speak about our constitutional arrangements in total ignorance of the facts, and distribute that ignorance to millions of readers.

Our after-dinner speaker on Friday night was Bryan Pape, who gave the Sir Harry Gibbs Memorial Oration. Bryan's paper enabled him to expand on his case in 2009 before the High Court of Australia, *Pape v The Commissioner of Taxation*, which will come to hold an honoured place in the cause of constitutional federalism. He described the slippery slope down which cooperative federalism gave way to collaborative federalism and has finally degenerated into executive federalism. It seems that there is no end to the reach of the Commonwealth Government.

Saturday morning's opening session dealt with the Commonwealth delivery of State Government services, and we were given case studies for and against such delivery by Andrew Podger and Dr Dan Norton. That was followed by a session on property rights, prompted by the topical questions of the Resources Super Profits Tax on the mining industry, and on the acquisition of property to build the National Broadband Network, with papers by Lorraine Finlay, the Hon. Keith de Lacy, and Richard Douglas on behalf of himself and Grant Donaldson.

In Saturday afternoon's session we revisited the perennial question of the restoration of a State income tax with a paper by Professor Jonathan Pincus.

The afternoon concluded with the first part of our *festschrift* in honour of John and Nancy Stone, when Des Moore reminded us of John's great contributions to the spirit and practice of federalism during his time as a senior officer of the Commonwealth Treasury, and particularly as its head. The long-standing friendship and mutual respect between these two colleagues was very evident in all that Des Moore had to say

Saturday night's after-dinner speaker, the Honourable Justice Dyson Heydon, spoke about the lives of John and Nancy Stone and gave us the second part of our *festschrift* in honour of these two remarkable people who played such an important role in the establishment of The Samuel Griffith Society. The prodigious amount of scholarship and research that went into the preparation of this paper told us almost as much about His Honour as His Honour told us about John and Nancy Stone.

This morning we were given three different aspects of administrative law, federalism and State sovereignty, with papers by the Honourable Justice Gilmour, the Honourable Christian Porter, and a closing address by the Honourable Colin Barnett, Premier of Western Australia. Our Conference Convenor, Julian Leaser, was somewhat prescient in inviting the Premier to give the closing address, given the current state of play in Canberra and the Premier's very real experience of a hung parliament and minority government.

As I reported to the Society's annual general meeting yesterday afternoon, as soon as I close this conference the Society's presidency will pass from me to the Honourable Ian Callinan. It has been a privilege to serve as your President these past five years, and I have been fortunate to have been greatly supported, first by John and Nancy Stone, and more recently by Bob Day and Joy Montgomery. However, no doubt acting under the influence of my past employment, I am accustomed to an appointment at pleasure with the expectation of a five year term, and I therefore asked the Board to allow me to stand down at the conclusion of this conference. I wish the Society continuing success, and I look forward to being an active member and to attending its conferences for many years to come.

I wish you all safe journeys home.