

Introductory Remarks

Julian Leaser

Ladies and gentlemen, welcome to this, the 22nd Conference of The Samuel Griffith Society, the fourth to be held in Western Australia.

We meet seven days after a federal election during which both sides of politics continued their assault on the federation. The view among federal politicians seems to be that there is almost no area of activity into which the Commonwealth's tentacles cannot reach: school education, town planning and crime prevention to name but three.

Despite the High Court's observations in *the Pape case* the expansion of Commonwealth power continues unabated. Bryan Pape, in the Sir Harry Gibbs Memorial Oration, has alerted us to the new development of executive federalism – using intergovernmental agreements to justify new areas of Commonwealth activity. It is a reflection of the high esteem in which Bryan is held that he was asked to follow Justice Dyson Heydon and the Hon Ian Callinan in delivering the Oration. As Ian Callinan said last year, Bryan Pape is a hero to members of this Society.

Last year I remarked that The Samuel Griffith Society is in transition. This conference brings that transition into greater focus. Sadly, in the past twelve months some of our members – Francis Dennis, the Hon Peter Howson and the Hon Peter Connolly – have passed away. Happily, new members are joining the Society. In welcoming the 2010 Mannkal Scholars to our Society, I should also mention that one of last year's Mannkal Scholars, Claire Vinton, has returned this year under her own steam. We hope that this year's Mannkal Scholars and the other people who are attending our conference for the first time will also become members and remain involved in the work of the Society.

On the theme of transition, our President, Sir David Smith, has recently informed the Board that he will be stepping down as the second President of the Society. Sir David is first and foremost a democrat and did not want to declare himself President for life.

Although I was not a member of the Board when he was elected President, I think the Board chose very well in inviting Sir David to become President. If I may say, he has been a worthy successor to Sir Harry Gibbs. He has been a welcoming and approachable President. His Australia Day messages and concluding remarks have been thoughtful and insightful. Through this Society and other activities he has made an extremely important contribution to our understanding of the events leading to the dismissal of the Whitlam Government, the reserve powers of the Crown – which are again the subject of public discussion – the role of Vice-Regal office holders and the republic debate more generally. His scholarship and his first hand insights have added a degree of authenticity which those issues needed. Like others in this room, in different contexts, he has suffered the slings and arrows for doing his duty. That he has neither lost his perspective nor his sense of humour makes him all the more remarkable. On a personal level he has been a great support and sounding board to me in organising the last two conferences and I have been proud to call him a friend for more than a decade. While stepping down as President I am delighted that Sir David will maintain an active involvement in the Society.

As part of our return to Western Australia, this year, a portion of this conference also pays tribute to the public life of John and Nancy Stone. We will hear from Des More and Justice Dyson Heydon about aspects of their contribution. I am too young to remember John's career in the public service or the Parliament but I remember first seeing him on television in the early 1990s on a program called *The Last Shout* hosted by Barrie Cassidy where John would do battle with *la gauche du jour* – usually

Anne Summers, Ros Kelly or Malcolm McGregor. John put his point forcefully, logically and with all the facts at his fingertips. Here was a true example of a lion in debate. John's persuasive skills must have been very good because Malcolm McGregor has recently become a member of this Society.

All of us owe John and Nancy Stone an enormous debt in founding and sustaining this Society with conferences we look forward to, friendships we treasure and intellectual nourishment we devour.

It is important to think back to 1992 when the Society was founded. At that time our system of government was being attacked on three fronts: first by the High Court through its implied rights and native title jurisprudence; secondly by the Keating Government who wanted to engage in rewriting our Constitution; and thirdly by successive Commonwealth governments from both sides which had sought greater central power at the expense of the States. The easy thing to do in such circumstances would have been to do nothing.

In 1770, in his *Thoughts on the Cause of the Present Discontents*, Edmund Burke observed: "When bad men combine, the good must associate; else they will fall one by one, an unpitied sacrifice in a contemptible struggle." This is often paraphrased and misattributed to Burke as: "All that is necessary for evil to triumph is for good men to do nothing." John, Nancy and Sir Harry Gibbs wanted to ensure that the good did associate and form this Society to foster some feeling in the defence of our Constitution. Undoubtedly the quality of our proceedings and the intellectual output of this Society has had an impact on the public debate in this country.

Anyone can stage an event once but to hold now 22 conferences in different cities all over the country for almost two decades is a remarkable achievement. John and Nancy Stone have turned an idea into an institution. For me, and many others here, The Samuel Griffith Society Conferences are always a highlight of the year. I am deeply honoured by the confidence John and Nancy have shown in me by entrusting me to carry on their important work with this Society. On a personal level I have always appreciated their encouragement, support and friendship across a range of endeavours over a long period of time. I am richer for all of our exchanges. As people of genuine merit I know they are embarrassed by the tributes being made this weekend. But I hope that they take it as a token of the affection in which they are held by all members of the Society.

Let me also record, at this time, my thanks to our Western Australian Board member, Bevan Lawrence, and our Secretary, Bob Day and his Personal Assistant, Joy Montgomery, for all they have done to bring about this Conference. Bob in particular has managed to do this while contesting election to the Senate.

Now to our program. While there has been some debate in recent years about a bill of rights there has been too little focus on property rights. Most bill of rights advocates are often opponents of property rights. Today these rights seem to be under attack from both Commonwealth and State governments through environmental, mining and telecommunications legislation issues which will be covered by various speakers.

We are particularly delighted that Justice John Gilmour is addressing our Conference this weekend. While many State and High Court judges have addressed our Society over the years, Justice Gilmour is the first Federal Court Judge to honour our Society in this way. He will speak about the *Kirk case* – one of the High Court's important decisions on Chapter III of the Constitution.

The theme of Federalism appears throughout our program this year. One of the many lost opportunities of the Henry Review was a chance to examine State taxation and in particular the now risible imbalance between the services the States are expected to provide and the revenues they are able to collect. The most important taxation reform Australia could engage in would be to hand significant taxing powers back to the States. Jonathan Pincus will have something to say on this.

The Conference program was framed around the time the National Health and Hospitals Reform Commission reported. It seemed to me that Australia was likely to confront a future referendum on the Commonwealth takeover of health care. In the interests of preparing for such a debate it is worthwhile hearing from two former senior public servants who had thought about these issues,

making the case for and against greater Commonwealth involvement in health. I also wanted to test the broader assumption which seems to underlie this debate about whether the Commonwealth really can deliver services better than the States.

The Conference will conclude with an address by the Premier of Western Australia who will hopefully provide some insights into dealing with the Rudd/Gillard COAG processes and the state of federalism regardless of who eventually forms government in Canberra.

After the success of last year's post-conference tour of Sir John Downer's house by former South Australian Premier John Bannon we are pleased to be offering another tour this year of the Western Australian Constitutional Centre by its chairman, the renowned lawyer Malcolm McCusker, QC. But we have much to get through before this tour.