Introduction

Julian Leeser

The 23rd Conference of The Samuel Griffith Society was the first to be held in Tasmania.

No society dedicated to supporting the Federation can say that it is truly a federalist society unless it meets in all of our State capitals. A conference in Tasmania had always been an ambition of the Society but, with relatively few of our members here, it was always a little risky. The strong support for Tasmania from attendees at the 2010 conference gave the Board courage to undertake this venture.

Our attendees numbered around 140, the largest conference to date. It also produced one of the most interesting gatherings of people we have had. Included among our attendees were two former State chief justices, four retired State premiers, three people who have served as solicitor-general including, in a first for our Society, a serving State solicitor-general, among many other distinguished members and guests.

Tasmania produced two great Federation founders – the radical liberal Andrew Inglis Clark who wrote one of the earliest drafts of the Constitution, created a new voting system, and was offered a seat on the High Court of Australia; and the conservative, Sir Edward Braddon, former premier, deputy to Sir George Reid in the first parliament and innovator of the "Braddon Clause" (section 87 of the Constitution) which provided that, for the first ten years of the Commonwealth, three quarters of the revenue from customs and excise be returned to the States. 2011 marks a century since the expiration of that section of the Constitution.

Although Tasmania is, and was, the smallest State, in terms of the framing of our Constitution it punched above its weight. It was therefore appropriate that we came to Tasmania and honoured the work of these men. Scott Bennett and Lawrence Neasey will cover particular aspects of the work of Inglis Clark.

What I enjoy most about the Samuel Griffith Society is that it is a melting pot of people who come from different States, have different professions, are supporters of different political parties and who have had different life experiences, yet all of whom want to support and defend our constitutional system. It is undoubtedly the people who attend the conferences that make this Society worthwhile.

On a sad note, we have lost a number of members recently including Victorian members Barry Strong and Walter Richardson and NSW members Ken Tribe, AC, and the Honourable R. P. Meagher, AO, QC. Roddy Meagher gave a unique address launching the first volume of the Society's proceedings and remained an active participant in the Society's affairs. As Justice Heydon wrote of Roddy Meagher in his excellent obituary in the *Australian Law Journal*, "[n]o one who knew him could ever forget him".

Very much alive but recovering from a serious heart operation is Ray Evans. Another member, Morton Bagley, did not attend as he had had a fall. All members of the Society join with me in wishing them a speedy recovery.

On a happier note, among those whose presence at the conference was especially welcome were the three Mannkal scholars: Whittney Jago, Olivia Walton and Toby Evans. Every year, the Mannkal Foundation sponsors a number of Western Australian students to attend our meetings. It is important for the longevity of our Society that we involve more students in our conferences. It would be wonderful if members or supporters in other States would agree to do as Mannkal does and sponsor the attendance of students from their home State at our conference.

It is also appropriate to acknowledge the assistance the Society received from Business Events Tasmania, the Mercure Hobart and the Tasmanian Government in putting this conference together. Let me, as always, record my thanks to our Secretary, Bob Day, and his assistant, Joy Montgomery, for all they did to bring about the Conference. More Australians learnt of the work of the Society in Hobart as the conference was filmed and shown on APAC- Sky News' public affairs channel. I thank APAC for their support.

In 2012 our Society turns 20. Our conferences and proceedings have been interesting and enjoyable and, through the publication of *Upholding the Australian Constitution*, the ideas discussed at the Samuel Griffith Society reach a broader readership. But we must ask ourselves a more important question – are we having an effect on the broader debate? Where are the new federalist parliamentarians, public servants, academics and judges? Is this annual conference the limit of our capacity? Are we doing enough?

I believe that the mission for the Society in its next twenty years is to move from being a learned debating society to becoming a much more direct influence in the public debate of our nation. If the values of our Society: respect for our Constitution, federalism, the rule of law, skepticism of international law and what the Americans might call "judicial modesty" are to flourish, we must do more to promote our ideas. We must build a coalition for the values of this Society in the law, in the parliaments of our nation, in academia and among students. As a start I propose that we trial Samuel Griffith Society student clubs at one or two university campuses. I also think that we must begin to identify academics, lawyers, jurists and parliamentarians on all sides of politics who share the values of this Society and encourage them to get involved. It is only then that we can have greater success in spreading the important ideas for which this Society stands. Please give me your ideas about how we can achieve this and what, if anything, you might be willing to do to make it happen.

Now to the conference.

We were honoured to experience the splendour of one of Australia's best Government Houses and to be entertained by His Excellency the Governor and Mrs Underwood and some outstanding musicians. Members of the Society will remember this event for a long time. Later we heard a very important paper from His Excellency's predecessor, the Honourable Bill Cox, about the oft-used reserve powers of the Governor of Tasmania. The beneficiary of the exercise of the reserve powers in 1989 was Michael Field, one of our speakers. Mr Field led a government with a hung parliament in coalition with Bob Brown. I think ultimately he found it as unsatisfying an experience as his federal colleagues are now finding it.

In my view the worst decisions of the Gleeson and French courts to date is their jurisprudence on electoral law (the cases of *Roach* and *Rowe*). I express no view on the merits of the policy behind the impugned legislation but it seems to me that, as a matter of law, the High Court erred in both cases. Save for very few matters, the framers of our Constitution left Parliament with unfettered discretion to provide the electoral machinery of the Commonwealth.

Paul Pirani of the Australian Electoral Commission spoke of some of the matters which arise in administering electoral law. Professor Jim Allan addressed the shortcomings of these decisions.

Scott Bennett furnished a very valuable paper on the introduction, history and operation of the Hare-Clark voting method used for the House of Assembly in Tasmania.

Several of our recent conferences have contained papers on bills of rights and this one was no different. With a government inquiry into the Victorian Charter under way, Dr Margaret Kelly examined the case for repealing the Victorian anachronism.

The decisions of the High Court prompt questions about judicial selection and judicial philosophy. These matters form the basis of Ben Jellis's appraisal of High Court activity during the Howard years. Murray Cranston considered similar questions in relation to the Supreme Court of the United States and some other federal courts of appeal.

Robert Ellicott, QC, covered a range of issues relevant to a possible referendum about recognition

of Indigenous peoples in the Constitution of Australia and advanced a proposed amendment.

As always, the Society was honoured by the presence of Justice Dyson Heydon. He spoke about constitutional facts, an issue highlighted by our President, Ian Callinan, when he and Justice Heydon were colleagues on the High Court.

The home stretch of our conference involved another possible referendum we might face on recognition of local government. Like one on Indigenous recognition, it will provide a red rag to an activist judiciary and, in the case of the recognition of local government, would likely weaken the Federation. We also heard a prescient analysis of the constitutionality of the school chaplaincy program which was before the High Court recently.

In 2010, our second post-conference tour was conducted by Malcolm McCusker, QC, who has subsequently been appointed Governor of Western Australia. Lawrence Neasey investigated the possibility of showing us over Andrew Inglis Clark's house. Unfortunately, much of the inside of the house, which is of historical significance, has been demolished. Lawrence kindly prepared a walking tour that members could take in their own time around sites of significance to Inglis Clark. The usual guided tour was replaced by a talk about Inglis Clark by Lawrence, and a "Tastes of Tasmania" lunch.