

Introduction

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The 24th Conference of The Samuel Griffith Society was held in Brisbane during the weekend of 17-19 August 2012. It marked the 20th anniversary of the Society's birth.

1992 was undoubtedly a momentous year in Australia's constitutional history.

On 2 January 1992 the perspicacious John and Nancy Stone decided to incorporate the Samuel Griffith Society thirteen days after Paul Keating was appointed Prime Minister.

On 1 February 1992 Prime Minister Keating called for a new Australian flag. On 24 February 1992 Prime Minister Keating caused a stir by making republican references in a speech welcoming Her Majesty the Queen to Australia.

On 5 May 1992 John Stone wrote to like-minded individuals inviting them to join the Society.

On 3 June 1992 the High Court delivered its decision in the Mabo case.

On 4 June 1992 Australians for a Constitutional Monarchy was formed.

On 25 June 1992 Justices Deane and Toohey found an implied notion of equality in the preamble to the Constitution in the Leeth case.

The first conference of the Samuel Griffith Society was held in Melbourne from 24 to 26 July 1992.

On 30 September 1992 the High Court discovered an implied freedom of communication in the Constitution in the Australian Capital Television and Nationwide News cases.

A day later High Court Justice John Toohey delivered a speech entitled, "A Government of Laws and Not of Men." In it he suggested that if the people did not enact a bill of rights in the Constitution, the High Court might imply one, over time, at any rate.

On 13 November 1992 Justices Deane and Gaudron found an implication in the Constitution of a right to a fair trial in the Dietrich case.

Constitutionally Australia was, as the Chinese curse suggests, living in interesting times. The atmosphere in 1992 was quite different to 2012, but there were also many similarities.

In 1992 many thought that an Australian republic was "inevitable." In 2012, the prospect of Australia electing a fervently monarchist prime minister has killed off any further idea of an Australian republic.

In 1992 a Labor Government had its political advertising legislation struck down by an activist High Court. In 2012 a Labor Government had its plain packaging legislation upheld by an activist High Court.

In 1992 Australia won seven gold medals at the Barcelona Olympics. It was a cause of national celebration. In 2012 Australia won seven gold medals at the London Olympics. It was a cause of national humiliation!

And, as I was only lately reminded, in 1992, in response to an increase in unauthorised boat arrivals, a Labor government enacted mandatory detention legislation. Some things never change.

Two papers at the 2012 Conference considered the High Court decisions of 1992 which continue to haunt Australia. One, by the Solicitor-General of New South Wales, Michael Sexton, SC, examined the Mason Court's invention of the implied freedom of political communication. Strangely, for a federalist society, we have never previously had a serving State solicitor-general address the Society so we are very honoured to have Michael on this occasion.

The other paper was Gary Johns's address on native title 20 years since Mabo. Gary Johns was a member of the Keating Government when it formulated its response to native title. He has been a significant contributor to debates on indigenous questions ever since.

The 2012 Conference continued the Society's tradition of eclectic scholarship.

The Conference opened with the fourth Sir Harry Gibbs Memorial Oration. It was delivered magnificently by Senator George Brandis, QC. The theme was the threat to freedom of speech arising from the Finkelstein inquiry. What disturbed me most was the passage he quoted from the Finkelstein report:

. . . in order for Mill's conception of freedom of expression to operate, two central components are required: Citizens must have the capacity to engage in debate, in the form of relevant critical reasoning and speaking skills. They must also have equal opportunity to participate, in the form of access to public forums where they can articulate their views and debate with one another. There is real doubt as to whether these capacities are present for all, or even most, citizens.

It was quite an extraordinary statement. Clearly some members of our judicial, academic and journalistic elite hold most Australians in contempt. I read into those comments, however, a more sinister, quasi-eugenistic view of our society which suggested some people do not have the proper mental capacity to participate in the public debate. Clearly the Finkelstein report deserves more criticism.

Our President, Ian Callinan, spoke about how the defamation law may provide a better balance on the power of the media than an Orwellian committee.

A special highlight of the Conference was an address on the life of Sir Samuel Griffith and his role in the making of the Constitution of Australia by Justice Dyson Heydon, whom I have previously described as Australia's finest after-dinner speaker.

Since the conference was held unfortunately Justice Heydon has been forced to retire from the High Court by virtue of section 72 of the Constitution. The Society has been very honoured by the support he has given throughout his time on the Court. He is an outstanding jurist, a generous friend and a great Australian, we are honoured to be associated with him.

A principal concern of this Society, federalism, was the subject of several addresses. Two were given by former Treasurers of Western Australia. Richard Court, also a former Premier, has been an eloquent advocate of the federal cause for many years.

At the time of the conference Christian Porter was in career transition. He had recently retired as Treasurer and Attorney-General of Western Australia before transferring to Canberra as Member for Pearce. He takes to Canberra formidable debating skills, an unrivalled intellectual arsenal, and deep philosophical convictions rooted in the very values for which this Society stands.

To complete our consideration of the federal matters, Keith Kendall revisited the case for State-based income tax.

Three other addresses deserve mention Lorraine Finlay's address on indigenous recognition was most significant. So far no-one has provided proper, scholarly examination of many of the real questions surrounding recognition of indigenous people in the Constitution.

Josephine Kelly examined the external affairs power in relation to the environment and I am pleased to say there is a paper from John Paul, the man who taught political science to me for three years at the University of New South Wales, on the role of the Speaker of the House of Representatives.

The program concluded with a special tour of the Sir Harry Gibbs and Sir Samuel Griffith collections at the new Queen Elizabeth II Court Complex.

Thanks, as always, are due to Bob Day and the irrepressible Joy Montgomery for making the logistical side of the Conference run so smoothly.

The Samuel Griffith Society is not only about the interesting lectures and outstanding presentations we have from speakers, it is also about the interesting people who constitute our membership.

Some of those who joined the cause in 1992 have passed away in the last year and, as always, at this time, it is appropriate to acknowledge the passing of: Francis Dennis, OAM; Dr John Eddy, SJ; Kevin Pownall; Alexander McPherson; and Barry Strong.

Another of our members who has passed away deserves special mention. Emeritus Professor Colin Howard, QC, was one of Australia's outstanding legal scholars. He taught at the universities of Adelaide and Queensland, and was Hearn Professor of Law at the University of Melbourne from 1965 until 1990.

His text books on constitutional and criminal law are still in print. He influenced two very different justices of the High Court, our President, Ian Callinan, to whom he taught criminal law at the University of Queensland, and Lionel Murphy, on whose staff he served as General Counsel.

In the early years of the Society he gave nine papers on subjects as diverse as the external affairs power, the race power, native title and the role of the High Court. They reflected his great scholarship and his scepticism. For all his contribution to Australia, his passing has been inadequately marked but the death of Colin Howard represents a loss to this Society as it does to the nation.

On a happier note, we always have a distinguished audience and it is remiss to acknowledge anyone in particular but I would like to mention the Honourable Norman Moore, MLC, the Minister for Mining in Western Australia. He has announced that he will not be standing for re-election at the 2013 elections in Western Australia.

He has been very active in the affairs of the Society for many years. We hope that he has a happy, healthy and extremely active retirement which includes continued participation in the activities of the Society.

As always we were delighted to welcome our Mannkal scholars. Every year Ron Manners finances a group of Western Australian students to attend the Conference. The competition to win a Mannkal scholarship is fierce. The winners attending the Conference in Brisbane were: Heather Anderson; Karen Andreychuk; Binuk Kodituwakku; Vlada Lemaic; Melita Parker; Jay Tampi; and Molly Greenfield.

In 2012, as an innovation, the Society called upon its members to consider funding additional scholarships so that more students could attend. A number of members were very generous in this regard and we were able to raise sufficient funds for five scholarships. Our thanks for their generosity go to John Richardson; Harold Clough;

Christopher Game; Robert Nixon; John Bell; as well as to a member who wished to remain anonymous.

The 2012 Samuel Griffith Scholars are: Samuel Walpole; Joshua Sproule; Harrison Smith; Kristen Scott; and William Isdale.

Finally, the Society is grateful to Professor James Allen for judging the scholarship.