

## Introduction

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The 25<sup>th</sup> Conference of The Samuel Griffith Society was held in Sydney in November 2013.

The 2013 Conference was scheduled to be held in Melbourne. It was moved to Sydney. This was not, as was rumoured, because our board member, Richard Court, agreed with the former Prime Minister, Paul Keating, that “if you are not living in Sydney you are just camping out.” It was rather because the Spring racing carnival would have needlessly increased accommodation costs at that time of the year in Melbourne.

The real reason for delaying the Conference from its traditional August outing to November was because of the involvement of a number of board members in the Federal Election.

Regardless of the political party that individual members support, I am sure I can speak for everyone when I say that we were delighted to see our Secretary, Bob Day, elected as a Senator for South Australia. I am confident that Bob will serve both the people of South Australia and the cause of federalism in the States’ House very well indeed.

Let me also take this opportunity to thank Bob and Joy Montgomery for all they have done to put together the less glamorous parts of the Conference and maintain the smooth running of the Society in general.

I was also delighted that, for the third year in a row, the Australian Public Affairs Channel (APAC) broadcast the Conference.

We met a weekend before the new Parliament was sworn in – a new Parliament, a new Government and a new Prime Minister.

While the Prime Minister, Tony Abbott, has been one of the strongest defenders of the Crown in our Constitution, he has not been such a fan of federalism. But things seem to be changing. The latest edition of his book, *Battlelines*, excludes chapters attacking federalism. The Prime Minister has also promised –

To work ... with the states, ... [to] produce a white paper on COAG reform, and the responsibilities of different governments, to ensure that, as far as possible, the states are sovereign in their own sphere.<sup>1</sup>

This white paper presents the Society with a great opportunity to draw upon 22 years of outstanding scholarship to make a strong submission to the Government about why a federalism that more closely reflects the framers’ vision is in our nation’s interest. I intend to put to the board a proposal that the Society form a committee to write such a submission. Professor Greg Craven’s contribution at this Conference gave us food for thought on this matter.

Samuel Griffith is not just a conference. It is a society. It is where we enjoy the company of like-minded friends on a yearly basis. Sadly, during the course of the past year, three of our members have passed away: Ronald Archer, Christopher Pearson and Charles Copeman.

Let me briefly say something about Christopher and Charles. Christopher Pearson was a deep thinker, a talented writer and a serious wit. He was devoted to the Constitution, conservatism and Catholicism. Christopher spoke at one of the early

meetings of the Society in Adelaide and attended our conference whenever the Society visited his adopted city. Christopher's principal contribution to the defence of our Constitution was as editor of the *Adelaide Review*, a journal read well beyond the borders of South Australia – where he published constitutional defenders including Peter Coleman and John Stone. A serious *bon vivant*, his company was always entertaining especially over a glass of pedro ximinez (the “black sherry” as he used to call it).

Charles Copeman was one of the bravest and most principled men of our age. Charles's work, attempting to improve workplace productivity at Robe River in the mid-1980s, made him bitter enemies and lifelong admirers. As his son, Michael, wrote, “Charles succeeded in reforming Robe River's productivity and turning it into a model for Australian mining operations in the future.” In retirement Charles was active in the H R Nicholls Society, Australians for Constitutional Monarchy and this Society. Wherever there was a good cause Charles would be there to lend his enthusiasm, his determination and his passion for Australia.

Charles, with Amy McGrath, was the principal force behind the H S Chapman Society. And, although he did not live to see his goal of a more transparent and fraud-proof Australian electoral system achieved, the events of the 2013 election, particularly in Western Australia, will hopefully give impetus to some of the reforms he pursued. I do not recall Charles ever having missed a Samuel Griffith conference as long as I have been coming to them. Today Charles is much missed by us all. But might I note the considerable pleasure we all drew from Alison Copeman's attendance at the Conference. I am grateful for the many kindnesses the Copeman family have shown to Joanna and me over the years, not least of all Alison's role as Joanna's former French teacher!

At the 2013 Conference we heard from philosopher and biographer, Damien Freeman, about another lion of the Society, the late Roddy Meagher, who helped launch the Society in 1992. Damien's reflections will help us assess whether debates about our Constitution have changed much over the last two decades.

On a happy note we were again indebted to Ron Manners and the Mannkal Foundation for providing scholarships for students to attend the Samuel Griffith Society Conference. The 2013 Mannkal scholars were Genevieve Mitchell, Catarina Canberra, Stephanie Hughes, James Illich, Lauren Reed and Murray Tennent-Brown.

Juel Briggs is also to be thanked. Juel sponsored a Samuel Griffith Scholarship in 2013. We were delighted to welcome Mitch Dudley as the 2013 Samuel Griffith Scholar.

I would like to thank all the speakers at the 2013 Conference. Many prepared their papers in a very short time frame. I am very grateful to them for their industry and their courtesy.

At the opening dinner we were entertained by Dyson Heydon in his first appearance at the Society since his retirement from the High Court. Dyson Heydon's two papers to the Society on Sir Samuel Griffith are classics that will bear study by people who want to appreciate the contribution of a great Queenslander and a great Australian. All of us admire Dyson Heydon's scholarship and his ability to combine great wit and history to bring long dead characters back to life. It is an honour for all of us to be associated with a man of Dyson Heydon's stature and scholarship.

In a change of pace, on Saturday evening we heard from Nick Cater, a senior editor

at *The Australian* until recently and author of *The Lucky Culture*. He discussed the failed experiment that is the Australian Human Rights Commission.

I note that Marcus Einfeld was President of that body from 1986 to 1990. Every Commissioner since that time can be described as a worthy successor to Mr Einfeld. Since the *Brandy* decision<sup>2</sup> in 1995, in which the High Court significantly clipped the Commission's wings, the Commission has been a body in search of a purpose and that purpose most often has been to cause trouble. Rather than appointing more Commissioners, the new Government would be better to abolish the Commission. Its education functions could be performed by the Attorney-General's Department and its conciliation functions could be given to the Administrative Appeals Tribunal.

The most important constitutional issue during 2012-13 was the scandalous but aborted Local Government referendum. Two papers reflected on that referendum. Senator Dean Smith, Convenor of the Parliamentary No Committee, considered the lessons from that referendum. Senator Bridget McKenzie, if I may say, a worthy exponent of the Stoneite tradition in the National Party, looked at the absolute abuse of the process where one side of the debate received \$31.6 million of public money and the other side received only \$500,000. There is work to do to ensure a blatant attempt to buy the Constitution does not happen again.

The next constitutional change Australians may be asked to consider will be indigenous recognition. Dr Gary Johns, who has a great interest in the Constitution, and indigenous policy, examined what such a referendum will mean for Australia.

One of the issues this Society was established to discuss is judicial activism. One very activist decision of the Mason Court was *Kable*.<sup>3</sup> In that case, contrary to earlier thinking, the Court limited the power of State parliaments to get State courts to do things which would be incompatible with their ability to receive federal jurisdiction. The *Kable* principle has made it more difficult for governments to control organized crime, terrorism and serious violent criminals and sex offenders. It looked like the *Kable* principle was being confined by the Gleeson Court. The former High Court Justice, Michael Kirby, said that *Kable* was "a guard-dog that barked but once."<sup>4</sup> However, under the French Court, the *Kable* principle has been given a second life. Gim Del Villar's paper, "*Kable*: The Dog that won't be silent," illuminated these developments.

In the shadow of the election, it is important to reflect on how complex Senate voting has become and the growing influence of minor parties, some good and some bad. My former political science lecturer, John Paul, provided an historical perspective on independents and minor parties in the Commonwealth Parliament. Professor Ian McAllister, one of Australia's most distinguished psephologists and author of the Australian Election Study, looked at options for Senate voting reform.

Malcolm Mackerras also addressed the Conference on these matters.

Professor Anne Twomey reviewed the dubious constitutionality of some pork-barreling programs which commenced at the end of the Gillard Government.

Having explored issues around a State income tax at the 2012 Conference, Keith Kendall compared how other similar federations handle vertical fiscal imbalance.

The federalism session was capped by a panel of State solicitors-general – the people who are responsible for arguing the case for the States to a High Court that has, since 1920, been less sympathetic to the States' position. The panel provided members with an insight into the challenges and the thinking of the States as they try

to defend the Constitution our framers created in the High Court.

At the end of the Conference, we retraced a small leg of the voyage from Brooklyn to Refuge Bay on the Hawkesbury River that the Queensland Government's ship, *Lucinda*, took in 1891. On Easter Saturday, 28 March 1891, Samuel Griffith, Edmund Barton and Charles Cameron Kingston together with Henry Wrixon, Bernhard Wise, Sir John Downer and A J Thynne drafted the Constitution on the Hawkesbury aboard *Lucinda*. It was our good fortune to enjoy the very agreeable part of Australia where this great document was shaped and began to take a form that we recognize today.

The papers read to the Conference have been prepared for publication by John Nethercote.

### **Endnotes**

1. Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 16 May 2013, 3574 (Tony Abbott).
2. *Brandy v Human Rights and Equal Opportunities Commission* (1995) 183 CLR 245.
3. *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 53.
4. *Baker v The Queen* (2004) 223 CLR 513 [54].