

Foreword

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After an interval of nearly two and a half years, The Samuel Griffith Society returned for its sixth Conference to Melbourne, the city in which its Inaugural Conference was held in July, 1992.

The papers delivered to this Conference, which constitute this Volume in the Society's series Upholding the Australian Constitution, were focused, as always, not on one single theme, but on a number of sub-themes comprising, in the judgment of the Society's Board of Management, some of the major constitutional issues confronting Australia today.

Thus, after not scheduling any papers at our previous (Sydney) Conference on what we have generally termed The Aboriginal question (Mabo and all that), we returned to that issue with two papers: first, a characteristically ironical assessment by Dr Colin Howard of the High Court's decision in *Western Australia v. Commonwealth* (1995); and secondly, an examination by Emeritus Professor Austin Gough of the Hindmarsh Island and La Trobe University affairs, involving allegedly sacred Aboriginal beliefs or archaeological material, and leading him to the conclusion that, in effect, the various Aboriginal Heritage Acts, both State and federal, have, in defiance of section 116 of our Constitution, established an official religion.

One of the fundamental flaws in our federal structure as it has evolved has been the imbalance in the financial powers of the Commonwealth and the States, at least as those powers have been interpreted over the years by the High Court. It is thus particularly appropriate that these Proceedings should contain two papers under the general rubric of Federalism and State Finances.

The first of them, by Mr Des Moore (himself for 28 years a Commonwealth Treasury official before his resignation in 1987), argues that, with some few notable exceptions, the great majority of Commonwealth specific purpose payments to the States under section 96 have no significant effect upon the final allocation of spending by State governments, and that such financial arrangements primarily constitute an exercise in extending or preserving the Commonwealth's political power.

The second paper in this area, by Dr Greg Craven, takes as its starting point the proposition that the High Court of Australia was provided for in our Constitution not merely to interpret that Constitution but also, in doing so, to preserve its federal nature—that is, to protect the States from the unwarranted incursion of federal power.

In his powerfully argued and thoroughly depressing assessment of the Court's performance in that regard, Dr Craven concludes that almost from the outset, but particularly since the *Engineers Case*, it has persistently and, of recent years, even wilfully, failed in that constitutional duty of care.

It is commonplace today to hear it said that, whether at federal or State level, our elected representatives are no longer faithfully representing the views of the great majority of those who have elected them. Increasingly, it is said, their performance is characterised by subservience to the minority policies, often of a highly authoritarian nature, of assorted pressure groups.

With that persistent (and growing) refrain in mind, the Society at its fourth (Brisbane) Conference introduced onto its agenda for the first time the topic of so-called direct democracy. It pursued that topic in Sydney, and again on this occasion, with two papers from the Clerk of the

Senate, Mr Harry Evans, and Professor Patrick O Brien, respectively, each of which, in their very different ways, makes riveting reading.

Despite having thus singled out these six papers for specific mention, it would be quite wrong to imply that their six fellows were in any whit their inferiors. On the contrary, it is a tribute to all those who have once more produced them that all twelve papers in this volume are as substantially meaty as they are highly readable by everyone wishing to inform themselves about the debate on constitutional issues in Australia. It is to that debate that this Volume, like its five predecessors, is dedicated.