

## **Introductory Remarks**

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Ladies and Gentlemen, welcome to this, the sixth Conference of The Samuel Griffith Society. Melbourne was, of course, the venue for the Society's inaugural Conference in July, 1992, and it is good, so to speak, to be back.

Last night we had from the Attorney-General for Victoria, the Honourable Jan Wade, an address on The Future of the Federation, which not only honoured the Society (of which she, and her husband, are both members), but also was a characteristically thoughtful contribution to the debate which is central to the Society's existence.

I take this opportunity to thank the Attorney-General not merely for her address, to which I shall refer again later, but also for her assistance in obtaining the approval of the Presiding Officers for our opening Dinner last night to be held in the splendid surroundings of the Queen's Hall in Parliament House. I understand that, over a century ago, the very first Federation Banquet was held in that same Queen's Hall at the outset of the long drawn out discussions which led, eventually, to the Federation

of the six Colonies under what was then our new Constitution. It would be hard to think of a more appropriate venue in which to have begun our Conference, and I repeat our thanks to Mrs Wade for facilitating that outcome.

It is instructive to look back upon the program for that 1992 inaugural Conference, to which I referred earlier, and to note how much more sharply defined the major constitutional themes on which it focused have since become.

The Mabo judgment had then very recently been handed down by the High Court; it was referred to in passing in the paper by Hugh Morgan, but had otherwise barely entered the consciousness of the great majority of Australians. Today, of course, its consequences loom ever larger, and ever more ominously, not only in the constitutional future of this country, but in its economic future also.

Indeed, as those of you who have read *The Australian* this morning will know, those consequences-or matters related to them-are now extending ever more widely into the whole intellectual and cultural future of this country. Later this morning we shall hear from Professor Austin Gough his full account of those aspects, to which *The Australian's* report this morning refers.

In some ways almost by contrast, my own judgment is that the Republic issue has if anything diminished in practical significance. In 1992 we had no less than three papers, out of the thirteen in all which were delivered, on that topic. On this occasion we have none, although the matter will no doubt be touched upon in one or two of the papers on more general topics, such as that by Professor Minogue this evening.

This is, in my view, because the more the Republic has been talked about-particularly by Mr Paul Keating on the one hand and Mr Malcolm Turnbull on the other-the more impractical it has begun to appear. Since the whole purpose of this Society is to ensure that, before constitutional changes are actually proposed, they should be adequately and widely talked about, I take much heart from that course of events.

Another contrast with that inaugural Conference is that our program this weekend contains two papers on direct democracy . The growing interest in that topic is, I believe, a direct result of the increasing disquiet among Australians about the growth, in our representative democracy, of the power of the Executive and, within that Executive, of the Prime Minister in particular-what some have described as "Prime Ministerial dictatorship". Anyone observing the parliamentary scene in Canberra today can only conclude that we are currently suffering from a very bad case indeed of that phenomenon.

So, as I say, the particular issues are becoming more sharply defined. Nevertheless, the general issue remains what it has been from the outset-the growth of centralism in Canberra at the expense of the healthy functioning of the Federation.

The continuing drive for self-aggrandisement by politicians and bureaucrats in Canberra has been facilitated by two means : first, by the persistent and, I would say, even wilful neglect of its constitutional duties by the High Court of Australia; and secondly, via the almost laughable (were its results not so serious) distortion by the Court of the import of those two words external affairs in section 51 (xxix) of the Constitution.

Our inaugural Conference four years ago contained one paper on each of those topics, and this weekend we shall return to them again with, in effect, two papers on each. In this, the 75th anniversary year of that watershed of federalism in Australia, the Engineers' Case of 1920, it is appropriate that one of those papers-the one with which this Conference will conclude tomorrow- focuses on that case.

In her thoughtful address last night the Honourable Jan Wade expressed the hope that the Society might focus more in the future on some of what might be called the "practical" issues confronting our Federation today, such as the (mis) allocation of responsibilities in such fields as health and education. While I entirely endorse her views on both those functional areas-and many others like them-I cannot but be reminded of Keynes' famous remark that "practical men" (he would never have said practical persons ) were almost invariably the slaves of some defunct theoretician (he referred specifically to economic theorists).

While therefore I entirely agree that such practical issues as those to which Mrs Wade referred are a concern of this Society, it may be appropriate to remind ourselves (and perhaps even her) that the climate of opinion in which debates over practical issues can be won will be formed, in the first instance, by debates over such general issues as the distribution of powers, the need for power to be divided if liberty is to be preserved, and so on-issues of the kind, in short, to the discussion of which this Society is dedicated.

As previously remarked, one such issue is the abuse of the external affairs power, and we shall begin our Conference today with a Session containing two papers on that topic. As I shall be chairing that Session, perhaps I may kill two roles with one Stone by slightly extending these introductory remarks in that regard.

As all of you would know, our previous Conference in Sydney last April was honoured by what proved to be a remarkable paper from a previous Chief Justice of the High Court of Australia-our President's predecessor in that regard-Sir Garfield Barwick.

Sir Garfield's name also appears in the program of this Conference, and we shall shortly hear a brief paper from him on the external affairs power. Regrettably, the state of his health precludes his attendance in person to present it, and it will be read on his behalf by Mr Barrie Purvis. In the nature of the case, there cannot be our usual question period following that paper, and after it has been read we shall therefore move straight on to the following paper, The External Affairs Power : The State of the Debate, by Mr S E K Hulme, QC, whose previous presentations to this Society

have delighted all those who have been privileged to hear them. Indeed, and without meaning any disrespect to Sir Garfield, it may be fair to say that, if the brevity of his paper permits us, as it will, to hear Mr Hulme at somewhat greater length than usual, that will at least be a very considerable consolation.

Ladies and gentlemen, I shall therefore now close these introductory remarks, announce the opening of the first Session of the Conference, and call on Mr Purvis to present Sir Garfield Barwick's paper to you.