

Introductory Remarks

John Stone

Ladies and gentlemen, welcome to this, the eighth Conference of The Samuel Griffith Society, and the first to be held in Canberra. As I said last night, for such an avowedly federalist body, that seems appropriate.

That said, however, it would be remiss of me not to acknowledge, with pleasure, the splendid attendance this weekend. I do not know how much that owes to the relative closeness of Canberra to both Sydney and Melbourne, or how much to the recently heightened topicality of many of the matters which are to be on our Agenda today and tomorrow. Whatever the reason, it is pleasing indeed to see such a roll-up. Thank you all for coming.

When I have made introductory remarks of this kind to previous Conferences, I have usually begun by commenting in some degree on the address given us by the speaker to our dinner on the Friday evening. Clearly, that would not be appropriate in this case.

There will, however, be no lack of material before us over the next day or so. Having in mind the Commonwealth Government's recent confirmation of its intention to hold, next December, a Constitutional Convention, we shall be opening our Conference this morning with four papers dealing with topics which might appropriately be discussed at any such Convention.

In doing so we are, of course, building upon the earlier groundwork of that kind which was laid at our Adelaide Conference nine months ago. Then, as you will recall, we also discussed four such topics: a proposed constitutional amendment of the "external affairs" power (section 51(xxix)); the republic issue; the need to constitutionally entrench our present Australian flag; and the possibilities for reforming the High Court.

Today we shall be returning, more definitively, to two of these topics, the republic, and the High Court. In addition, we shall hear from Professor Jeffrey Goldsworthy on a role for the States in initiating referendums; and from Dr Colin Howard, QC on the so-called "race" power (section 51(xxvi)).

Beyond the ambit of the prospective Constitutional Convention, several issues have assumed particular prominence since we last met. The most pressing and immediate of those issues is that of "native title", where the High Court's original "fairy tale" as told in its *Mabo* judgment has now been followed by a sequel in its equally (or in some ways even more) fanciful judgment in the *Wik Case*.

Tomorrow we shall devote the whole morning to three papers on what we have customarily called "the Aboriginal question". As well as papers from Dr John Forbes on *Amending the Native Title Act*, and from Mr S E K Hulme, QC on *The Wik Judgment*, we shall also hear what I can promise you (because I have already had the privilege of reading it) will be a fascinating paper from Roger Sandall on what I might call the cultural verities of the so-called "reconciliation" issue. All in all, tomorrow morning promises to be a feast indeed.

The other issue which, since we last met, has taken on a certain immediacy is that of the conduct of the High Court itself - or more precisely, of certain of its members. Three months or so ago, I asked Dr (now Professor) Greg Craven to speak to us this weekend on *The Engineers' Case*, in which the then High Court went out of its way in 1920 to ignore the plain fact that the Constitution it was interpreting was, first and foremost, a *federal* one. Naturally, I had no idea at

that time that during this past week today's High Court would be, in effect, reconsidering one of its more recent examples of judicial activism, namely the views on the law of defamation which it stated a few years ago in the *Theophanous* and *West Australian Newspapers* cases.

As it happens, that portion of Professor Craven's paper which, at his request, I shall be reading on his behalf this afternoon is specifically directed to that very issue - namely, the process whereby our High Court in recent years has begun to "find" in our Constitution whatever the Justices in question have wanted to discover. It is a paper which, I predict, will be read with some interest in legal circles long after this Conference has disbanded.

While I have mentioned a number of the particular papers on our Agenda because of their current topicality, I would not like it thought that others, which I have not mentioned, will be of any less value or interest. On the contrary, I am prepared to make what I feel to be the proud claim that our Agenda as a whole for this Conference will be no less satisfying than its predecessors.

It is now time to move into that Agenda itself, which we shall do with our opening paper this morning from our President, Sir Harry

Gibbs, who is going to speak to us on the topic *A Republic: The Issues*. Ray Evans will chair this Session, and I shall now hand over to him the task of introducing Sir Harry.