

Foreword

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The Samuel Griffith Society's ninth Conference was held in Perth, and the papers delivered to it constitute this Volume in its Proceedings. For whatever reason -- and despite the obvious difficulties for the great majority of the Society's members in travelling to Western Australia -- the attendance was in fact somewhat greater than on any of the previous eight occasions.

Although, as before, this Conference was not focused about one particular theme, some six of the twelve papers delivered to it dealt in fact with various aspects of what the Society has termed, from its outset, "the Aboriginal question".

As these words are written, in mid-December, 1997, the federal Parliament has just adjourned for the end-of-year recess, with the Senate having rejected the Government's *Native Title Amendment Bill* and with some prospects of a double dissolution election on that (and other) issues in the second half of 1998. Against that background, Dr John Forbes' magisterial paper on *The Prime Minister's Ten Point Plan* should be required reading not merely for all Federal (and State) politicians, but also for those media savants who incessantly lecture their fellow Australians on matters in this area on which most of them clearly remain largely ignorant.

Yet, as Dr Stephen Davis points out in his paper, *Native Title: A Path to Sovereignty*, anyone who thinks that Australia's current native title mess could hardly be worse should look carefully at what is currently going on in the United Nations (and elsewhere, notably Canada) on some closely related matters, and think again.

Behind all these matters of property law, however, and associated questions such as "self-determination", "sovereignty" for so-called "indigenous peoples", and the like, lies a whole gamut of cultural (or, if you like, anthropological) questions about Aboriginal Australians which are not merely not being answered, but are not, in most cases, even being posed.

Austin Gough, a gentle man who wore his considerable learning lightly -- and who was, at the time, a member of the Board of Management of this Society -- wrote for the Perth Conference what is now Chapter Four in these Proceedings. His paper, *Romantic Solutions to Practical Problems*, deploys his own personal qualities of good humour and highly intelligent insights to gently satirise what is known today as "the Aboriginal industry" -- an industry chiefly notable for the slender representation within its ever-burgeoning ranks of anyone who could truthfully be described as a real Aborigine.

Sadly, on the evening of the very day on which Austin Gough had completed writing his paper, he was stricken by a severe coronary attack and died that night, to the great grief not merely of his wife and children, but of his wide circle of friends. I take this opportunity of saluting his work, and his memory.

The matter of "real" Aborigines having been raised, it is appropriate to mention also one other outstanding paper in this Volume, that by Pastor Paul Albrecht on *The Nature of Aboriginal Identity*. Pastor Albrecht, who was born and largely brought up at the Hermannsburg Lutheran Mission in Central Australia, has for many years now worked at the Finke River Mission there, and is a noted authority on Aboriginal language and culture.

In the course of editing this Volume I have had occasion to read Pastor Albrecht's paper carefully on several occasions. I would wholeheartedly recommend it to anyone who, like myself (and most other Australians), does not claim to have a deep knowledge of "Aboriginality" but who,

not being total simpletons, can also see before them every day mounting evidence that the Aboriginal affairs policies of successive Australian governments for the past 30 years (at least) have been, and remain, massively misdirected.

In the words of our President, Sir Harry Gibbs (see his *Concluding Remarks*), "Australia has gone astray in dealing with its Aboriginal population Surely it was a mistake [by the Parliament] to extend the provisions of the *Native Title Act* [1993] to an undefined and disparate class which includes persons who have no cultural affinity with the tribal Aboriginals, and no direct relationship with the land claimed; and equally erroneous to give a right to negotiate' -- that is, a right to demand ransom -- to persons without requiring them to produce even a scintilla of evidence of their entitlements to the land rights which they claim".

Truly, those whom the gods wish to destroy, they first make mad.

Because the chief work of this Society is to promote debate (from a federalist viewpoint) about our Constitution, that work has inevitably come to focus, in part, upon the role of the High Court of Australia, including some in particular of its Justices. This in turn has led to the generation of a widening debate about judicial activism.

In his paper in Perth, *Reflections on Judicial Activism: More in Sorrow than in Anger*, Professor Greg Craven contributed some further, one might almost say definitive, reflections on that topic. It is a paper which should be read not only by the Court's critics (for whom it will undoubtedly provide much ammunition), but also -- and in this respect more importantly -- by its friends. His conclusion (more precisely, one of them) that "there is no convincing argument of law, constitutional principle or democracy that possibly could be regarded as justifying the constitutional progressivism of the High Court" is both sobering and demanding of an answer. Perhaps one of our present Justices (for some unfathomable reason, the name of Mr Justice Michael Kirby springs to mind) could provide one.

However that may be, this is a Volume which deserves to be widely read, and widely debated. It is to that objective that, like all its predecessors, it is dedicated.