

In February 1890, Sir Henry Parkes, delegates from the Australian colonies and from Fiji and New Zealand met in Parliament House, Melbourne, at the Australasian Federation Conference. In February 1990, in the same venue, the Law School of Melbourne University presented the first instalment of eleven conference-laden years. From now until the centenary of federation in 2001 we can expect a lot of legal and political soul-searching about federation.

The Melbourne conference was an attempt to look again at the concepts of federation and federalism. It comes as no surprise that the conference was dominated by lawyers. There were historical papers by Sir Daryl Dawson and Professor Robin Sharwood; a comparative paper by Professor Thomas Fleiner-Gerster, Director of the Institute on Federalism, Fribourg, Switzerland; and a paper on the positive aspects of federalism by economist Cliff Walsh and political scientist Brian Galligan from the Centre for Federal Financial Relations at the Australian National University. Other papers dealt with questions of constitutional law, more or less within a political framework.

Melbourne University's Michael Crommelin and Greg Craven called for a new model of federalism with more guaranteed powers for the States. They suggested that this might only be done by changing the thinking of the members of the High Court. They suggested that the current interpretation of the Constitution had destroyed any balance that a federal system might suggest. However, subsequent speakers pointed out that it was not possible to find any particular 'balance' in the text of the Constitution. That document had to be interpreted in the light of changed circumstances. The founders had chosen to allow for interpretation of the Constitution by the High Court, and to include s109 which meant that valid Commonwealth legislation would prevail over any inconsistent State laws. Professor Leslie Zines, of the Australian National University, indicated that apart from a few specified powers which were exclusive to the Commonwealth, all the

legislative powers which the Commonwealth parliament could exercise were concurrent powers: no exclusive powers had been reserved to the States. He generally supported the approach of the Engineers case and the abandonment of implications by the judges from the constitutional text.

Professor Cheryl Saunders of Melbourne and Professor Michael Coper, a member of the former Inter-State Commission, both explored the fiscal and economic aspects of federalism. Both saw problems with the interpretation of s90, which gives exclusive power to raise duties of customs and excise, to the Commonwealth. However, they differed as to whether this was the sole source of fiscal problems.

Other papers dealt with the protection of human rights in a federal system and with the interpretation of the Constitution. The papers were of high quality, and the discussions as decorous and dignified as their surroundings. The inevitable discussions which fill the next ten years may be a little more heated.

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## OUR COVERS

The artist whose work appears on the front and back covers of this issue is Susan Stamp. More of her work may be viewed at Niagara Galleries, Punt Road, Richmond, Victoria. Front cover: 'Cross Examination'; back cover: 'Three Judges in Appeals Court'.

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## OBITUARY

*the Right Honourable Sir Edward McTiernan.* Sir Edward McTiernan, High Court judge from 1930 to 1976 died on 9 January 1990 aged 98. Sir Edward was admitted to the New South Wales Bar in 1916 and before commencing practice served for a year as Associate to Mr Justice Rich of the High Court. Sir Edward was elected as a member

of the New South Wales Legislative Assembly in 1920. He had earlier joined the Political Labor League (later the Labor Party) in 1910. Sir Edward became Attorney-General of New South Wales in 1920 at the age of 28, the youngest person ever to be appointed to that position. He served as Attorney-General from 1920 to 1922 and again from 1925 until 1927 when he retired from State politics and returned to the Bar. He then became part-time Challis lecturer in Roman Law at the University of Sydney for 2 years. In 1929 he was elected to the House of Representatives. He was appointed, together with Dr HV Evatt, to the High Court in 1930 and served as a Justice of that Court for 46 years. Sir Edward was appointed to the High Court at a time when the court had to contend with an extraordinary range of litigation in public and private law, applicable to the circumstances sometimes of peaceful prosperity, sometimes of peaceful adversity and sometimes of war. His was renowned for his sensitivity for individual human rights. He acted as Chief Justice of the High Court on many occasions and for substantial periods. His judgments were distinguished by their clarity and lack of convoluted language. His extensive knowledge of constitutional law and of the common law made an invaluable contribution to the High Court. Sir Edward was appointed Privy Councillor in 1963 and sat on the Privy Council in 1972.

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## personalia

*family court of australia.* The Hon Justice John Ellis has been assigned to the Appeal Division of the Family Court of Australia. The Hon Justice Alwynne Rowlands has been appointed a Judge Administrator of the Family Court of Australia. The office of Judge Administrator was created in 1988 and is unique to Australian courts. Judge Administrators assist the Chief Justice and the Deputy Chief Justice in ensuring the orderly and expeditious discharge of the business of the court. The Chief Justice has indicated that

he will assign Justice Rowlands to administer the eastern region of the Court. Justice Ellis, who is the current Judge Administrator for this region, has been assigned to the Appeal Division of the Court and will assist the Chief Justice on other matters. Justice Ellis is the most senior judge of the Court after the Chief Justice and Deputy Justice. In announcing the appointments, the Deputy Prime Minister and Attorney-General, Mr Bowen, said 'Justice Ellis will bring considerable experience to the Appeal Division having previously served two 2-year terms. He will continue to assist the Court in administrative tasks assigned by the Chief Justice. During his time as Judge Administrator of the Eastern Region, the Court has seen a marked reduction and, some cases elimination of delay in the very busy registries under his care. The Chief Justice has indicated the Court's indebtedness to him for this service. Justice Rowlands was appointed a Judge of the Court in April 1988. He has previously been a judge of the County Court of Victoria for four and a half years and the first President of the Administrative Appeals Tribunal of Victoria which he set up. Prior to his appointment to the County Court he was a Queens Counsel practising widely in all jurisdictions.

*Mr Alan Hogan, Master of the Supreme Court of the ACT.* Mr Alan Hogan, until recently a Special Magistrate on the ACT Magistrate's Court and also served a term as director of the Australian National University Legal Workshop. In 1988, the Australian Capital Territory Supreme Court Act was amended to provide for the position of Master. Funds were allocated in the 1989 Budget to enable the appointment of a Master. This will be the first appointment of a Master to the Court. The Master will exercise the jurisdiction of the Supreme Court subject to such conditions as are specified in the rules of the court. It is anticipated that he will deal with personal injury and other such matters leaving the judges of the court more time to devote to the more complex and time consuming cases.